839

12-167

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~638~~. 381 118

THE RICHMOND MINING COMPANY OF NEVADA,
PLAINTIFF IN ERROR,

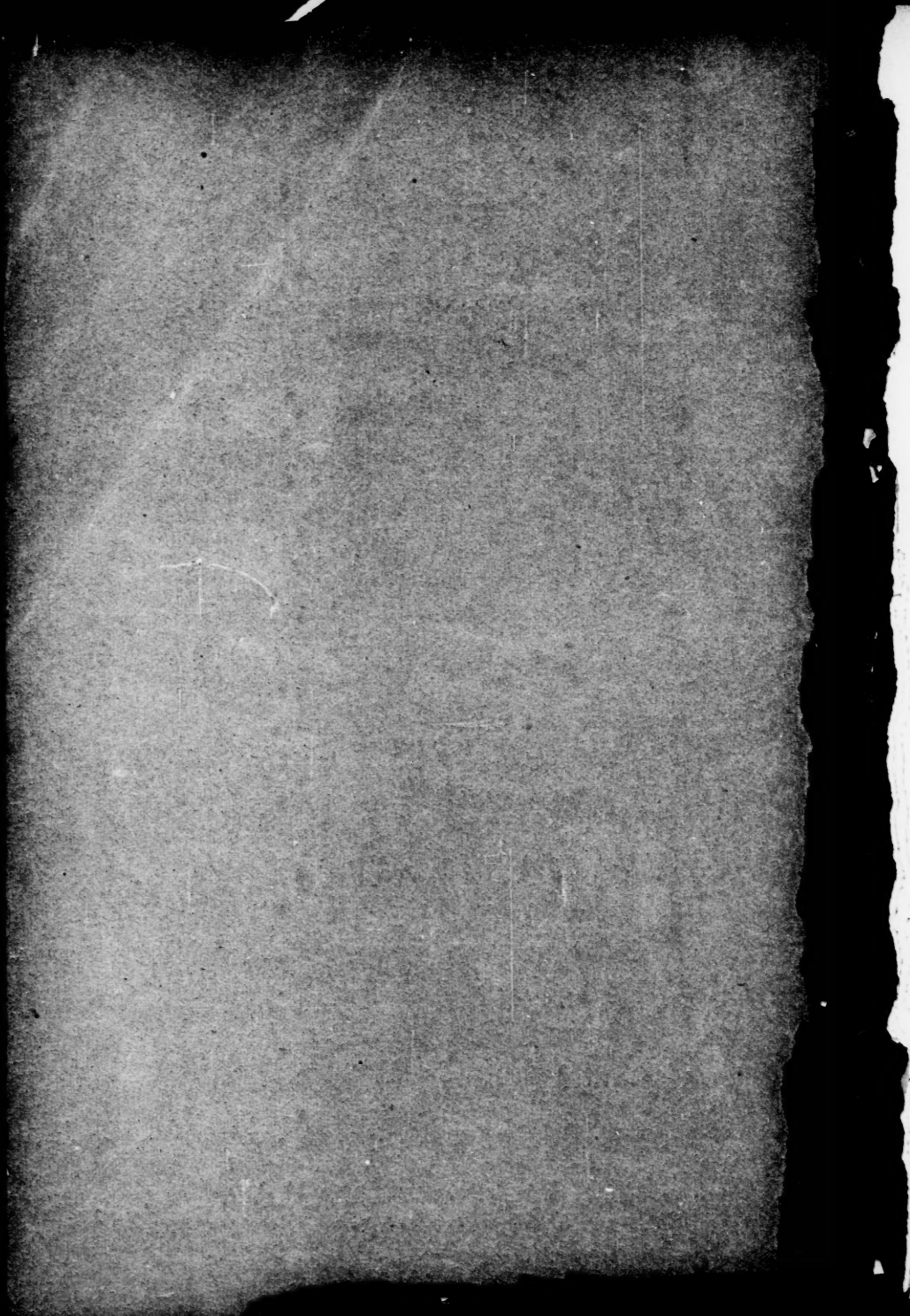
*vs.*

THE EUREKA CONSOLIDATED MINING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

**FILED JANUARY 17, 1878.**

**ADDITION TO RECORD FILED DECEMBER 30, 1878.**



# SUPREME COURT OF THE UNITED STATES.

## No. 638.

THE RICHMOND MINING COMPANY OF NEVADA, PLAINTIFF IN ERROR,

*vs.*

THE EUREKA CONSOLIDATED MINING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

INDEX.


| | Original. | Print. |
|---|---|---|
| Complaint | 1 | 1 |
| Answer | 12 | 5 |
| Order of removal from State Court | 26 | 11 |
| Stipulation waiving jury, &c | 28 | 12 |
| Opinion (construction mining statutes, &c.) | 31 | 13 |
| Findings | 58 | 27 |
| Exhibits attached to findings: | | |
| Mining laws | 70 | 32 |
| Deposit locations | 72 | 34 |
| Min. Cert. No. 80—plat and patent | 74 | 35 |
| " " 145 " " " | 77 | 38 |
| " " 144 " " " | 79 | 41 |
| " " 109 " " " | 82 | 43 |
| " " 79 " " " | 85 | 46 |
| " " 108 " " " | 88 | 49 |
| " " 101 " " " | 91 | 51 |
| " " 288 " " " | 94 | 51 |
| Champion location | 104 | 58 |
| Min. Cert. No. 111—plat and survey | 105 | 58 |
| Utah and Arctic locations | 108 | 61 |

| | Original. | Print. |
|---|---|---|
| Exhibits attached to findings: | | |
| Richmond location | 109 | 62 |
| Tip-Top and Lookout locations | 110 | 62 |
| Min. Cert. 163—plat and patent | 112 | 63 |
| " " 164 " " " | 115 | 66 |
| Plaintiff's map | 118 | 68 |
| Defendant's map | 119 | 68 |
| Deed—plaintiff to defendant | 120 | 69 |
| Agreement (plaintiff and defendant) and map | 121 | 70 |
| Deed—plaintiff to defendant | 124 | 74 |
| Judgment | 127 | 79 |
| Bill of exceptions | 130 | 80 |
| Writ of error | 142 | 84 |
| Citation | 144 | 85 |
| Bond | 146 | 86 |
| Stipulation | 149 | 87 |
| Utah locations | 152 | 88 |
| Arctic location | 155 | 88 |
| Antarctic " | 156 | 89 |
| Atlantic " | 157 | 89 |
| Deed—Wren to Richmond Co | 158 | 90 |
| Deed—Rickard to Richmond Co | 162 | 91 |
| Deed—Potts to Richmond Co | 166 | 92 |
| Deed—Wren to Richmond Co | 170 | 94 |
| Patent—Champion lode | 175 | 95 |
| Diagram | 178 | 96 |
| Certificate | 184 | 98 |

1 *Complaint.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Nevada.

THE EUREKA CONSOLIDATED MINING COMPANY, PLAINTIFF,
*vs.*
THE RICHMOND MINING COMPANY OF NEVADA, THOMAS WREN, and JOSEPH POTTS, DEFENDANTS.

The Eureka Consolidated Mining Company, plaintiff in this suit, by S. Heydenfeldt, H. K. Mitchell, and Garber & Thornton, its attorneys, complains in this amended complaint, by leave of the court therefor first had and obtained, of and against the Richmond Mining Company of Nevada, Thomas Wren, and Joseph Potts, defendants in this suit, and alleges: That the plaintiff, the Eureka Consolidated Mining Company, is and was at the time of the commencement of this suit, and at the time of the committing of the grievances hereinafter mentioned, a corporation created, organized, and existing under and by the laws of the State of California, having its principal place of business at San Francisco, in said state;
2 and that said plaintiff is a citizen of the State of California.

That the defendant, the Richmond Mining Company of Nevada, is and was at the time of the commencement of this suit, and at the time of the committing of the grievances hereinafter mentioned, a corporation created, organized, and existing under and by the laws of the State of Nevada, having its principal place of business at Eureka, in said state; and that the defendants, the Richmond Mining Company of Nevada, Thomas Wren, and Joseph Potts, are each and all citizens of the State of Nevada.

That heretofore, to wit, on the first day of September, A. D. 1876, and for a long time prior thereto, plaintiff was the owner of, seized in fee and in the possession of and thence hitherto has been and still is the owner of and entitled to the possession of the following described portion of that certain mining ground and lode, bearing silver and other valuable minerals, situated on Ruby Hill, in the Eureka Mining District, in the county of Eureka, in the State of Nevada, known as the Eureka Consolidated ground and lode, to wit: that portion of said lode, commencing at a point on said lode whence the north corner of United States survey number 38
3 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, and extending south 52 deg. east from said point along said lode twelve hundred and fifty (1250) feet, together with three hundred (300) feet of surface on each side of said portion of said lode and with all the minerals and other valuables therein contained.

And also that portion of said lode before mentioned and that portion of all lodes, veins, and ledges bearing silver and other valuable minerals, throughout their entire depth, the top or apex of which

lies inside of the said surface lines, extended downward vertically, lying between vertical planes drawn downward through the following described end lines, to wit: a line passing through said point on said lode, whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, and extending from said point north 38 deg. east, and south 38 deg. west, and a line parallel to said line passing through a point which is south 52 deg. east, twelve hundred and fifty (1250) feet distant from the said point whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet. Also all that
4 surface ground within which said portion of said lode first hereinbefore mentioned has its top or apex, beginning at a point whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, and running thence north 38 deg. east, four hundred and forty-seven (447) feet; thence south 52 deg. east, four hundred and fifty-one and two-tenths ($451\frac{2}{10}$) feet; thence north $65\frac{1}{4}$ deg. east, fifty (50) feet; thence south 67 deg. east, three hundred and forty-one (341) feet; thence south $73\frac{1}{2}$ deg. east, one hundred and one (101) feet; thence south 8 deg. east, two hundred and fifty (250) feet; thence south $9\frac{3}{4}$ deg. east, sixty-eight (68) feet; thence south 38 deg. west, two hundred and fifty-four (254) feet; thence north $76\frac{3}{4}$ deg. west, one hundred and ten (110) feet; thence north 52 deg. west, seventy-seven and one-half ($77\frac{1}{2}$) feet; thence south 38 deg. west, fifty (50) feet; thence south 52 deg. east, three hundred (300) feet; thence south 38 deg. west, two hundred (200) feet; thence north 52 deg. west, three hundred (300) feet; thence south 38 deg. west, one hundred (100) feet; thence north 52 deg. west, seven hundred and eighty-five and four-tenths ($785\frac{4}{10}$) feet; thence north $28\frac{1}{2}$ deg. east, one hundred and one and four-tenths ($101\frac{4}{10}$) feet; thence north
5 52 deg. west, one hundred and forty-seven and eight-tenths ($147\frac{8}{10}$) feet; thence north 38 deg. east, one hundred and fifty-three (153) feet, to the point of beginning.

And that portion of all lodes, veins, and ledges bearing silver and other valuable minerals, throughout their entire depths, the top or apex of which lies inside of said surface lines extended downward vertically, lying between vertical planes drawn downward through the said end lines, to wit: the line passing through said point whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, and extending north 38 deg. east, and south 38 deg. west; and the line parallel to said line, passing through a point which is south 52 deg. east, twelve hundred and fifty (1250) feet distant from the said point whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet; except that portion of said premises, lode, vein, and ore thereof, contained, included, enclosed, and confined

within the following surface lines drawn downward vertically, to wit: beginning at a point whence the northeast corner of the
6 Buckeye or southwest corner of the Champion bears south 52 deg. east, two hundred and two and two-tenths ($202\frac{2}{10}$) feet; running thence north 52 deg. west, one hundred and forty-seven and eight-tenths ($147\frac{8}{10}$) feet; thence north 38 deg. east, one hundred and fifty-three (153) feet, and thence south 6 deg. east, two hundred and twelve and eight-tenths ($212\frac{8}{10}$) feet to the point of beginning.

That while plaintiff was so as aforesaid the owner, seized, possessed, and entitled to the possession of said premises, the defendants afterwards, to wit, on the first day of September, A. D. 1876, entered into and upon a portion thereof, to wit, that portion thereof which has been exposed, opened, cut, and worked in the drifts and excavations from the Richmond working shaft, and ousted and ejected the plaintiff therefrom, and thence hitherto have wrongfully and unlawfully retained and withheld, and still do wrongfully and unlawfully retain and withhold the same and the possession thereof from the plaintiff's, to the damage of plaintiff in a large sum of money, to wit, in the sum of two million and four hundred and fifty thousand dollars in gold coin of the United States.

And plaintiff alleges that that portion of the said premises
7 of plaintiff into and upon which the defendants have entered, and from which they have ousted and ejected the plaintiff, and which they wrongfully and unlawfully retain and withhold from plaintiff as aforesaid, is of the value of one hundred thousand dollars in gold coin of the United States, and upwards, and the value of the use and occupation thereof is a large sum of money, to wit, five hundred thousand dollars in gold coin of the United States per month.

And for a further cause of action the plaintiff alleges that the defendants heretofore, to wit, on the first day of September, A. D. 1876, entered into and upon a certain portion of the said premises of plaintiff hereinbefore described, situate in the county of Eureka, in the State of Nevada, to wit, that portion thereof which has been exposed, opened, cut, and worked in the drifts and excavations from the Richmond working shaft, and ejected, expelled, put out, and amoved the plaintiff therefrom, and kept and continued it so expelled and amoved for a long space of time, to wit, from the day and year aforesaid until the commencement of this action, and during that time with picks, shovels, and other iron instruments dug, made, and sunk certain drifts, excavations, and holes in the
8 said portion of the said premises of plaintiff, and from and out of the said drifts, excavations, and holes so dug, made, and sunk as aforesaid, then and there raised, dug, and got divers large quantities of ore, earth, and rock, bearing silver and other valuable minerals, of the said plaintiff, to wit, thirty-five thousand tons, then and there being of great value, to wit, of the value of seventy dollars in gold coin of the United States per ton, and the

same so raised, dug, and got from and out of the said drifts, excavations, and holes, they, the said defendants, then and their seized, took, and carried away and converted to their own use, to wit, at the said county of Eureka, in the State of Nevada aforesaid; wherefore plaintiff saith that it is injured and hath sustained damage to the amount of two million and four hundred and fifty thousand dollars in gold coin of the United States.

And for a further cause of action plaintiff alleges that the defendants heretofore, to wit, on the first day of September, A. D. 1876, entered into and upon a certain portion of the said premises of plaintiff hereinbefore described, situate in the county of Eureka, in the State of Nevada, to wit, that portion thereof which
9 has been exposed, opened, cut, and worked in the drifts and excavations from the Richmond working shaft, and ejected, expelled, put out, and amoved the plaintiff from its possession and occupation thereof, and kept and continued it so expelled and amoved for a long space of time, to wit, from the day and year aforesaid until the commencement of this action, and during that time took and had and received to the use of them, the said defendants, all the issues and profits of the said portion of said premises, being of great value, to wit, of the value of five hundred thousand dollars in gold coin of the United States, per month, whereby the plaintiff during all the time aforesaid lost the issues and profits thereof.

And plaintiff alleges that this action arises under the laws of the United States.

Wherefore plaintiff prays judgment against defendants for the possession, restitution, and recovery of said premises, and for the sum of two million and four hundred and fifty thousand dollars in gold coin of the United States, with costs of suit.

S. HEYDENFELDT,
H. K. MITCHELL, AND
GARBER & THORNTON,
*Attorneys for Plaintiff.*

10 UNITED STATES OF AMERICA,
NINTH CIRCUIT,
DISTRICT OF CALIFORNIA. } *ss.*

George S. Dodge, first being duly sworn, deposes and says that he is one of the trustees and president of the Eureka Consolidated Mining Company, the plaintiff, having authority to verify the foregoing complaint; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

GEO. S. DODGE.

Subscribed and sworn to before me, this 27th day of March, 1877.

L. S. B. SAWYER,
*Comr. U. S. Circuit Court, Dist. Cal.*

(Endorsed:) In the Circuit Court of the United States for the Ninth Circuit, District of Nevada. The Eureka Consolidated Mining Company, plaintiff, vs. The Richmond Mining Co. of Nevada, Thomas Wren, and Joseph Potts, defendants. Amended com-
11 plaint at law. Ejectment. Filed March 29, 1877. T. J. Edwards, clerk. S. Heydenfeldt, H. K. Michell, and Garber & Thornton, attys. for plaintiffs.

Service of copy upon defendants' attorney this day admitted at Carson City, March 29, 1877. Robt. M. Clarke, attorney for defendants.

12 *Answer.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Nevada.

THE EUREKA CONSOLIDATED MINING COMPANY, Plaintiff,
*vs.*
THE RICHMOND MINING COMPANY OF NEVADA, THOMAS Wren, and Joseph Potts, Defendants.

Now comes the said defendant, The Richmond Mining Company of Nevada, and for its separate answer to the first count of the complaint filed against it and others herein—

Denies, on information and belief, that on the 1st day of September, 1876, or at any other time, the plaintiff was the owner of, or seized in fee, or in possession of, or that thence hitherto plaintiff has been, or still is the owner of, or entitled to the possession of, the lode described in plaintiff's complaint as the Eureka Consolidated lode, or any part thereof, except that portion lying southeasterly of a line commencing at a point on the southwesterly line of the Champion mining claim of plaintiff, two hundred and fifty feet from the southeast corner of said Champion mining claim,
13 and running thence north 38 deg. east (true meridian) to the northeasterly line of the Margaret mining claim of plaintiff, together with the right to follow said portion of said lode upon its dip, or that on the 1st day of September, 1876, or at any other time, the plaintiff was the owner of, seized in fee, or in the possession of, or that thence hitherto plaintiff has been or still is the owner of, or entitled to the possession of, three hundred feet of surface ground on each side of the portion of said lode described in plaintiff's complaint, or any portion thereof, except that portion lying within the exterior lines of that portion of the said Champion claim lying southeasterly of a line known as the compromise line between the Eureka Consolidated Mining Company's mining claims, and the Richmond Mining Company of Nevada's mining claim, and the At Last, Margaret, Nuget, Buckeye, Tennison, Mammoth, Sentinel, and Elliptic mining claims:

Or that on the 1st day of September, 1876, or at any other time, plaintiff was the owner of, seized in fee, or in the possession of, or that thence hitherto plaintiff has been or now is the owner of, or entitled to the possession of, that portion of the said lode described in plaintiff's complaint as the Eureka Consolidated lode, lying between vertical planes drawn downward through a line passing through the point whence the north corner of United
14 States survey number thirty-eight (38) of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, and extending from said point north 38 deg. east, and south 38 deg. west, and a line parallel to said line passing through a point which is south 52 deg. east, twelve hundred and fifty (1250) feet distant from the said point whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, or any part thereof, except as hereinbefore admitted:

Or that on the said 1st day of September, 1876, or at any other time, plaintiff was the owner of, seized in fee, or in the possession of, or that thence hitherto plaintiff has been or now is the owner of, or entitled to the possession of, any portion of any other lodes, veins, or ledges, the tops or apices of which lie within the surface lines first described in plaintiff's complaint, that on their dip or otherwise extend into or under the mining ground or premises hereinafter described as the mining ground and premises of defendant:

Or that on the 1st day of September, 1876, or at any other time, plaintiff was the owner of, seized in fee, or in the possession of, or that thence hitherto plaintiff has been or now is the owner of, or entitled to the possession of, all or any lode or lodes, vein or veins, ledge or ledges, throughout their entire depth, the top or tops, apex or apices of which lie inside of the following described surface
15 lines: beginning at a point whence the north corner of the United States survey number 38 of the Eureka Mining District bears north 38 deg. east, forty-seven (47) feet, and running thence north 38 deg. east, four hundred and forty-seven (447) feet; thence south 52 deg. east four hundred and fifty-one and two-tenths ($451\frac{2}{10}$) feet; thence north $65\frac{1}{4}$ deg. east fifty (50) feet; thence south 67 deg. east, three hundred and forty-one (341) feet; thence south $73\frac{1}{2}$ deg. east one hundred and one (101) feet; thence south 8 deg. east two hundred and fifty (250) feet; thence south $9\frac{3}{4}$ deg. east sixty-eight (68) feet; thence south 38 deg. west two hundred and fifty-four (254) feet; thence north $76\frac{3}{4}$ deg. west one hundred and ten (110) feet; thence north 52 deg. west seventy-seven and one-half ($77\frac{1}{2}$) feet; thence south 38 deg. west fifty (50) feet; thence south 52 deg. east three hundred (300) feet; thence south 38 deg. west two hundred (200) feet; thence north 52 deg. west three hundred (300) feet; thence south 38 deg. west one hundred (100) feet; thence north 52 deg. west seven hundred and eighty-five and four-tenths ($785\frac{4}{10}$)

feet; thence north 28½ deg. east one hundred and one and four-tenths ($101\frac{4}{10}$) feet; thence north 52 deg. west one hundred and forty-seven and eight-tenths ($147\frac{8}{10}$); thence north 38 deg. east one hundred and fifty-three (153) feet, to the point of beginning. Extending downwards vertically, lying between planes drawn downward vertically through the following described end-lines, to wit:

16 a line passing through a point on said lode, whence the north corner of United States survey number 38 of said Eureka Mining District bears north 38 deg. east forty-seven (47) feet, and extending from said point north 38 deg. east and south 38 deg. west, and a line parallel to said line passing through a point which is south 52 deg east twelve hundred and fifty (1250) feet distant from the said point whence the north corner of the United States survey number 38 of said Eureka Mining District bears north 38 deg. east forty-seven (47) feet, nor any portion thereof, extending into or lying under the mining claims and premises of defendant hereinafter described.

And the defendant avers that it is and was at the time of the commencement of this action the owner and entitled to the possession of the following described mining lands and premises, viz:

*First.* All those certain mining grounds and lodes bearing silver and other valuable minerals, situated on Ruby Hill, in the Eureka Mining District, in the county of Eureka and State of Nevada, more particularly described as follows, to wit: commencing at the northeast corner of the Atlantic mining claim, whence the Richmond shaft bears north 86½ deg. west nine hundred and forty (940) feet, and running thence south 38 deg. west seven hundred and ninety-seven and six-tenths ($797\frac{6}{10}$) to the southerly boundary of the

18 mining claim known as the Utah; thence along the southerly boundary line of said Utah claim, north 62½ deg. west six hundred (600) feet, thence north 38 deg. east seven hundred and ninety-seven and six-tenths ($967\frac{6}{10}$) feet, to the northerly line of the said Atlantic claim, and thence south 62½ deg. east six hundred (600) feet to the place of beginning, together with all the veins, lodes, ledges, dips, deposits, and bodies of ore bearing silver and other precious metals therein or thereunder, being the mining ground known as the Utah, Arctic, and Atlantic mining claims.

*Second.* That certain piece or parcel of mining ground and lode bearing silver and other valuable minerals, situated on Ruby Hill, in the Eureka Mining District, in the county of Eureka and State of Nevada, more particularly described as follows, to wit: beginning at post No. 1, near the summit of Ruby Hill, the same being post No. 4 of survey No. 38, made for the claim of the Eureka Consolidated Mining Company upon Champion lode, and post No. 2 of survey No. 43, made for the Eureka Consolidated Mining Company upon the Lookout lode, from which the northwest corner of the Richmond hoisting works bears north sixty-two (62) deg. forty-five (45) minutes west, at the distance of five hundred and eleven (511)

feet; thence from said post north 34 deg. 15 minutes west four hundred (400) feet to northwesterly corner of said survey No. 43 five hundred and one and one-half (501½) feet to post in stone monument marked "Richmond N. E. cor.;" thence south 38 deg.
19 west three hundred (300) feet to iron pin in stone monument; thence south 34 deg. 15 minutes east five hundred and one and one-half (501½) feet to stone monument standing at base of Limestone Bluff; thence north thirty-eight (38) deg. east three hundred (300) feet to the place of beginning, containing three (3) acres and thirty-nine one-hundredths ($\frac{39}{100}$) of an acre of land, more or less, and embracing five hundred and one and one-half (501½) linear feet of the Richmond lode, being the mining ground known as the Richmond mining claim.

*Third.* That certain piece or parcel of mining ground and lode bearing silver and other valuable minerals, situated on Ruby Hill, in the Eureka Mining District, in the county of Eureka and State of Nevada, more particularly described as follows, to wit: beginning at a post marked "Tip-Top S. E. cor." and "Richmond N. E. cor.," the same being the northeasterly corner of survey No. 64, made for the claim of the Richmond Mining Company of Nevada upon the Richmond lode, from which the Tip-Top shaft bears south 71 deg. west at the distance of one hundred and forty (140) feet, and the flag-staff in Main street, in town of Eureka, bears north 65 deg. 15 min. east at the distance of ten thousand three hundred and eighty-five (10,385) feet; thence from said post north 34 deg. 15 min. west, six hundred (600) feet to post marked "Tip-Top N. E. cor.;" thence south 38 deg. west three hundred feet to post marked "Tip-Top N. W. cor." 34 deg. 15 min. east six hundred (600)
20 feet to an iron pin and stone monument at northwesterly corner of said survey No. 64; thence north 38 deg. east three hundred (300) feet to the place of beginning, containing three (3) acres and ninety-three one-hundredths ($\frac{93}{100}$) of an acre of land, more or less, and embracing six hundred (600) linear feet of the Tip-Top lode, being the mining ground known as the Tip-Top mining claim.

*Fourth.* That certain piece or parcel of mining ground and lode bearing silver and other valuable minerals, situated on Ruby Hill, in the Eureka Mining District, in the county of Eureka and State of Nevada, more particularly described as follows, to wit: beginning at a post marked "No. 1, U. S. Survey No. 43," from which a prominent rocky point No. 2, the summit of Silver Hill, bears south 69.13 min. east, at a distance of seven thousand three hundred and twenty (7,320) feet, and the flag-staff in the town of Eureka bears north 63 deg. 1 min. east, at the distance of ten thousand one hundred and forty (10,140) feet; thence from said post south 38 deg. west two hundred (200) feet to post marked "No. 2, U. S. Survey No. 43," the same being post No. 4 of survey No. 38, made for the claim of the Eureka Consolidated Mining

Company upon the Champion lode, from which the highest point of Ruby Hill No. 1 bears north 51 deg. 30 min. east, at the distance of eighty-eight (88) feet; thence north 34 deg. 30 min. west four hundred (400) feet to post marked "No. 3, U. S. Survey No. 43;" thence north 38 deg. east two hundred (200) feet to post
21 marked "No. 4, U. S. Survey No. 43," from which the main shaft upon the Lookout lode bears south 29 deg. 15 min. east, at the distance of two hundred (200) feet; thence from said post No. 4 south 34 deg. 30 min. east four hundred (400) feet to the place of beginning, containing (1) acre and seventy-five one-hundredths ($\frac{75}{100}$) of an acre of land, more or less, being the mining ground known as the Lookout mining claim.

And defendant avers that the mining land sought to be recovered in this action is a part of the said premises of this defendant.

Said defendant further denies that on the 1st day of September, 1876, or at any other time, it entered upon the premises described in plaintiff's complaint, or any part thereof, or upon any premises owned, seized, or possessed by plaintiff, or to the possession of which it was entitled, or any part thereof, or that defendant on the 1st day of September, 1876, or at any other time, ousted or ejected plaintiff from said premises, or any part thereof, or that defendant has thence hitherto, or now does, wrongfully, unlawfully, or otherwise retain or withhold said premises or any part thereof from plaintiff, or that plaintiff has been damaged by any act of defendant in the sum of two million four hundred and fifty thousand dollars ($2,450,000), or in any sum whatever, but defendant admits that it is in possession of the premises, exposed, opened, cut, and
22 worked in the drifts and excavations from the Richmond working shaft, and avers that it is the owner thereof, and entitled to the possession of the same. And denies that the same or any part thereof is a portion of the premises of said plaintiff, or that defendant has ousted or ejected plaintiff therefrom.

And denies that the value of the use and occupation of said premises is five hundred thousand dollars ($500,000) per month in gold coin of the United States, or any other coin or currency, or any other sum near so great, or any considerable value.

And as to the second count or cause of action of the plaintiff's complaint, the defendant denies that heretofore, to wit, on the 1st day of September, A. D. 1876, or at any other time, the defendant entered into or upon any portion of the alleged premises of the plaintiff, and denies that that portion of mining ground which has been exposed, opened, cut, or worked in the drifts and excavations from the Richmond working shaft is, or at any time was the premises of the plaintiff, or any portion thereof, but avers that the same is and was at all the times aforesaid the property of the defendant; and denies that the defendant at any time ejected or expelled, put out or removed the plaintiff from the same or any part thereof, or kept or continued the plaintiff so expelled or removed at any time

whatsoever. And defendant denies that it raised, dug, or
23 got out of said premises or excavation, ore, earth, or rock bearing silver or other valuable minerals to the extent of thirty-five thousand (35,000) tons, or any number of tons greater than ten thousand (10,000). And denies that the same was of the value of seventy dollars per ton, or of any value whatever; and denies that the plaintiff by reason of the alleged premises, or by reason of any act or acts of the defendant whatever, was injured or sustained damage to the amount of two millions four hundred and fifty thousand dollars ($2,450,000) in gold coin of the United States, or in any amount whatever, in any coin or currency.

And the defendant avers that it is, and at the time of the commencement of this action was, the owner and entitled to the possession of those certain mining claims and grounds known as, and called the Atlantic, Arctic, Utah, Lookout, Tip-Top, and Richmond claims, more particularly described in the answer to the first count of the complaint, and expressly referred to here for greater certainty; and that the mining land sought to be recovered in this action is a part of said premises of this defendant.

And as to the third count or cause of action of the plaintiff's complaint, the defendant denies that heretofore, to wit, on the 1st day of September, A. D. 1876, or at any other time, the defendant
24 entered into or upon any portion of the alleged premises of the plaintiff, and denies that that portion of mining ground which has been exposed, opened, cut, or worked in the drifts and excavations from the Richmond working shaft is, or at any time was the premises of the plaintiff, or any portion thereof, but avers that the same is and was at all the times aforesaid the property of the defendant; and denies that the defendant at any time ejected, expelled, put out, or removed the plaintiff from the same or any part thereof, or kept or continued the plaintiff so expelled or removed at any time whatsoever. And defendant further denies that the issues and profits of said portion of said premises referred to in the said count of said complaint were of the value of five hundred thousand dollars per month, or any sum whatever, in gold coin or otherwise.

And defendant avers that it is, and at the time of the commencement of this action was, the owner and entitled to the possession of those certain mining claims and grounds known as, and called the Atlantic, Arctic, Utah, Lookout, Tip-Top, and Richmond claims, more particularly described in the answer to the first count of the complaint, and expressly referred to here for greater certainty. And that the mining land sought to be recovered in this action is a part of said premises of this defendant.

And now having fully answered, this defendant asks to be hence
25 dismissed with a judgment in its favor for costs and disbursements in this behalf expended.

THOS. WREN,
*Attorney for Deft.*

UNITED STATES OF AMERICA,
CITY AND COUNTY OF SAN FRANCISCO. } *ss.*

Edward Probert, being duly sworn, deposes and says, that he is an officer, to wit, a trustee of the above-named Richmond Mining Company of Nevada, the defendant, that he has read the foregoing answer of the said defendant company and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein stated on information or belief, and as to those he believes it to be true.

EDWARD PROBERT.

Subscribed and sworn to before me, this 8th day of June, 1877.

JOS. F. BEIRNE,
*Commissioner U. S. Circuit Court, Cal.*

(Endorsed:) U. S. Circuit Court for the District of Nevada. The Eureka Consolidated Mining Company, plaintiff, vs. The Richmond Mining Company of Nevada, et als., defendants. Answer of the Richmond Min'g Co. of Nevada, defendant.

Service of the within answer by copy hereby admitted, this 8th day of June, A. D. 1877. Garber & Thornton, attys. for plaintiff. Filed June 11, 1877. T. J. Edwards, clerk.

26 *Order of Removal from State Court.*

In the District Court of the Sixth Judicial District of the State of Nevada, in and for the County of Eureka.

THE EUREKA CONSOLIDATED MINING COMPANY, PLAINTIFF,
*vs.*
THE RICHMOND MINING COMPANY OF NEVADA, THOMAS WREN, and JOSEPH POTTS, DEFENDANTS.

Upon reading and filing the petition of the above named, The Eureka Consolidated Mining Company, plaintiff herein, for the removal of this suit into the Circuit Court of the United States for the District of Nevada, in the ninth circuit, in pursuance of the laws of the United States relating to the removal of suits from the state courts, and upon filing the security offered by said plaintiff according to the requirements of said laws; and, on motion of H. I. Thornton, attorney for said plaintiff, it is hereby ordered that the said petition and security be accepted, and that the said suit be removed into the next circuit court of the United States to be held in the said district of Nevada, in the said ninth circuit, and that no further proceedings be had in said suit in this court.

27 Witness the Hon. F. W. Cole, judge of the District Court of the Sixth Judicial District of the State of Nevada, in and for the county of Eureka, and the seal of said court, this 7th day of March, A. D. 1877.

F. H. HARMON, *Clerk.*

(Endorsed:) Filed in the office of the clerk of the Circuit Court of the United States for the District of Nevada, this 24th day of March, 1877. T. J. Edwards, clerk.

28 *Stipulation.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Nevada.

THE EUREKA CONSOLIDATED MINING COMPANY
*vs.*
THE RICHMOND MINING COMPANY OF NEVADA, Thomas Wren, and Joseph Potts.

It is stipulated and agreed that the several causes now pending in the above-entitled court between the above-named parties, both at law and in equity, including issues on bills and cross-bills, shall be tried on the 23d day of July next, and such subsequent days as may be necessary to complete the same, before the Honorables Stephen J. Field, Lorenzo Sawyer, and Edgar W. Hillyer, (or any two of them in the case of the inability or failure of the other to sit,) without a jury, and such evidence, oral and written, as the parties may respectively submit, subject, however, to all objections as to competency, relevancy, and materiality; that such trial be had at the city and county of San Francisco, California, with the same force and effect as if tried at the city of Carson, State of Ne-
29 vada, and that the respective judgments and decrees shall be entered in said respective cases in term time at said last-named place with the same force and effect as if the whole trial and proceedings took place at said city of Carson, and if it be necessary for the purpose of carrying out the spirit and intent of this stipulation, the evidence shall be considered as taken by said judges as commissioners or other officers and the causes be regarded as submitted for decision thereupon at said Carson City, and that the said judges, or the judges who shall hear said causes shall be empowered by virtue of this stipulation to make any and all orders in each and all of said causes by them deemed necessary to effectuate this stipulation. Nothing, however, shall prevent either of the parties hereto from making all proper motions for new trials and rehearing, and from prosecuting any and all appeals or writs of error, as in ordinary modes of trial.

San Francisco, June 1st, 1877.

GARBER & THORNTON,
*Solicitors for Complainant and Attys. for Plaintiff.*
THOS. WREN,
*Solicitor for Defts. and Atty. for Defts.*

30 (Endorsed:) In U. S. Circuit Court, Dist. Nevada. Eureka Con. M. Co. v. Richmond M. Co. et al. Stipulation. Filed June 4, 1877. T. J. Edwards, clerk.

32 *The Construction of the Mining Statutes of the United States of* 1866 *and* 1872.

The opinion of the Circuit Court of the United States for the District of Nevada, in the case of The Eureka Consolidated Mining Company vs. The Richmond Mining Company of Nevada, delivered at San Francisco, August 22d, 1877, by Mr. Justice Field.

33 *Explanation.*

This case, by stipulation of the parties, was tried in San Francisco before the Hon. Stephen J. Field, Justice of the Supreme Court of the United States, the Hon. Lorenzo Sawyer, United States Circuit Judge of the 9th Circuit, and the Hon. E. W. Hillyer, United States District Judge for the District of Nevada.

The hearing began on the 23d of July, 1877. The witnesses occupied two weeks, and the argument of counsel three days. it was argued for the plaintiff by Messrs. Heydenfeldt, H. I. Thornton, and Mesick; and for the defendant by Messrs. S. M. Wilson and Thomas Wren. After the conclusion of the argument, the court held the case under advisement until the 22d of August, when Mr. Justice Field delivered the unanimous opinion of the court.

33 In the Circuit Court of the United States in and for the Ninth Circuit and District of Nevada.

THE EUREKA CONSOLIDATED MINING CO.
*vs.*
THE RICHMOND MINING CO. OF NEVADA.

This is an action for the possession of certain mining ground, particularly described in the complaint, situated in Eureka Mining District, in the county of Eureka, in the State of Nevada. The plaintiff is a corporation created under the laws of California, and the defendant, The Richmond Mining Company, is a corporation created under the laws of Nevada. The other defendants, Thomas Wren and Joseph Potts, are citizens of the latter state. The action was originally commenced in a state court of Nevada, but upon application of the plaintiff, and upon the ground of its incorporation in another state, and the presumed citizenship, from that fact, of its corporators or stockholders in that state, it was transferred to the circuit court of the United States. The complaint in the state court, in addition to the usual allegations of a declaration in
34 ejectment, set forth various grounds upon which was based a prayer for an order restraining the defendants from working the premises in controversy pending the action. The defendants, in their answer to the complaint, not only denied the title of the plaintiff, but made various averments upon which a like restraining order against the plaintiff was asked. Both orders were granted. This union of a demand in ejectment for the property in contro-

versy with a prayer for provisional equitable relief, is permitted by the system of procedure which obtains in the state, thus saving the parties the necessity of litigating in two suits what can as readily and less expensively be accomplished in one. But this union is not permitted in the federal courts; and upon the transfer of the present action, the pleadings of the plaintiff were amended, by substituting a regular complaint in ejectment on the law side of the court; and a bill was filed for an injunction on its equity side. The defendants answered both, and also filed a cross-bill for an injunction against the plaintiff.

By arrangement of the parties, the defendants, Messrs. Wren and Potts, are dropped out of the controversy, and their names may be stricken from the pleadings. The claim for damages is also waived in this action, without prejudice to any future proceedings with respect to them. By stipulation the case at law—the action of ejectment—is tried by the court without the intervention of a jury, and the judges sit at San Francisco, instead of Carson, their finding and judgment to be entered in term time in the latter place as though the case were heard and decided there. The testimony taken in the action at law is to be received as depositions in the equity suit, and both cases are to be disposed of at the same time, to the end that the whole controversy between the parties may be settled at once.

The premises in controversy are of great value, amounting by estimation to several hundred thousands of dollars, and the case has been prepared for trial with a care proportionate to this estimate of the value of the property; and the trial has been conducted by counsel on both sides with eminent ability.

Whatever could inform, instruct, or enlighten the court has been presented by them. Practical miners have given us their testimony as to the location and working of the mine. Men of science have explained to us how it was probable that nature in her processes had deposited the mineral where it is found. Models of glass have made the hill, where the mining ground lies, transparent, so that we have been able to trace the course of the veins, and see the chambers of ore found in its depths. For myself, after a somewhat extended judicial experience, covering now a period of nearly twenty years, I can say that I have seldom, if ever, seen a case involving the consideration of so many and varied particulars, more thoroughly prepared or more ably presented. And what has added a charm to the whole trial has been the conduct of counsel on both sides, who have appeared to assist each other in the development of the facts of the case, and have furnished an illustration of the truth that the highest courtesy is consistent with the most earnest contention.

The mining ground which forms the subject of controversy is situated in a hill known as Ruby Hill, a spur of Prospect mountain, distant about two miles from the town of Eureka, in Nevada. Pros-

pect mountain is several miles in length, running in a northerly
36 and southerly course. Adjoining its northerly end is this spur called Ruby Hill, which extends thence westerly, or in a southwesterly direction. Along and through this hill for a distance slightly exceeding a mile, is a zone of limestone, in which, at different places throughout its length, and in various forms, mineral is found, this mineral appearing sometimes in a series or succession of ore-bodies more or less closely connected, sometimes in apparently isolated chambers, and at other times in what would seem to be scattered grains. And our principal inquiry is to ascertain the character of this zone, in order to determine whether it is to be treated as constituting one lode, or as embracing several lodes, as that term is used in the acts of Congress of 1866 and 1872, under which the parties have acquired whatever rights they possess. In this inquiry the first thing to be settled is the meaning of the term in those acts. This meaning being settled, the physical characteristics and the distinguishing features of the zone will be considered.

Those acts give no definition of the term. They use it always in connection with the term vein. The act of 1866 provided for the acquisition of a patent by any person or association of persons claiming "a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper." The act of 1872 speaks of veins or lodes of quartz or other rock in place, bearing similar metals or ores. Any definition of the term should, therefore, be sufficiently broad to embrace deposits of the several metals or ores here mentioned. In the construction of statutes general terms must receive that interpretation which will include all the instances enumerated as comprehended by them. The definition of a lode given by geologists is, that of a fissure in the earth's crust filled with
37 mineral matter, or more accurately, as aggregations of mineral matter containing ores in fissures.—(See Von Cotta's Treatise on Ore Deposits, Prime's Translation, 26.) But miners used the term before geologists attempted to give it a definition. One of the witnesses in this case, Dr. Raymond, who for many years was in the service of the general government as commissioner of mining statistics, and in that capacity had occasion to examine and report upon a large number of mines in the States of Nevada and California, and the Territories of Utah and Colorado, says that he has been accustomed as a mining engineer to attach very little importance to those cases of classification of deposits which simply involve the referring of the subject back to verbal definitions in the books. The whole subject of the classification of mineral deposits, he states, to be one in which the interests of the miner have entirely overriden the reasonings of the chemists and geologists. "The miners," to use his language, "made the definition first. As used by miners, before being defined by any authority, the term lode simply meant that formation by which the miner could be led or guided. It is an alteration of the verb lead; and whatever the miner could fol-

low, expecting to find ore, was his lode. Some formation within which he could find ore, and out of which he could not expect to find ore, was his lode." The term lodestar, guiding star, or north star, he adds, is of the same origin. Cinnabar is not found in any fissure of the earth's crust, or in any lode as defined by geologists, yet the acts of Congress speak, as already seen, of lodes of quartz, or rock in place bearing cinnabar. Any definition of lode as there used, which did not embrace deposits of cinnabar, would be as defective as if it did not embrace deposits of gold or silver. The
38 definition must apply to deposits of all the metals named, if it apply to a deposit of any one of them. Those acts were not drawn by geologists or for geologists; they were not framed in the interests of science, and consequently with scientific accuracy in the use of terms. They were framed for the protection of miners in the claims which they had located and developed, and should receive such a construction as will carry out this purpose. The use of the term *vein* and *lode* in connection with each other in the act of 1866, and their use in connection with the term *ledge* in the act of 1872, would seem to indicate that it was the object of the legislator to avoid any limitation in the application of the acts, which a scientific definition of any one of these terms might impose.

It is difficult to give any definition of the term as understood and used in the acts of Congress, which will not be subject to criticism. A fissure in the earth's crust—an opening in its rocks and strata made by some force of nature, in which the mineral is deposited, would seem to be essential to the definition of a lode in the judgment of geologists. But to the practical miner, the fissure and its walls are only of importance as indicating the boundaries within which he may look for and reasonably expect to find the ore he seeks. A continuous body of mineralized rock lying within any other well-defined boundaries on the earth's surface and under it, would equally constitute, in his eyes, a lode. We are of opinion, therefore, that the term as used in the acts of Congress is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. It includes, to use the language cited by counsel, all deposits of mineral matter found through a mineralized zone or belt coming from the same
39 source, impressed with the same forms, and appearing to have been created by the same processes.

Examining, now, with this definition in mind, the features of the zone which separate and distinguish it from the surrounding country, we experience little difficulty in determining its character. We find that it is contained within clearly-defined limits, and that it bears unmistakable marks of originating, in all its parts, under the influence of the same creative forces. It is bounded on the south side, for its whole length, at least so far as explorations have been made, by a wall of quartzite of several hundred feet in thickness; and on its north side, for a like extent, by a belt of clay, or shale, rang-

ing in thickness from less than an inch to seventy or eighty feet. At the east end of the zone, in the Jackson mine, the quartzite and shale approach so closely as to be separated by a bare seam, less than an inch in width. From that point they diverge, until on the surface in the Eureka mine, they are about 500 feet apart, and on the surface in the Richmond mine, about 800 feet. The quartzite has a general dip to the north, at an angle of about 45 degrees, subject to some local variations, as the course changes. The clay or shale is more perpendicular, having a dip at an angle of about 80 degrees. At some depth under the surface, these two boundaries of the limestone, descending at their respective angles, may come together. In some of the levels worked, they are now only from two to three hundred feet apart.

The limestone found between these two limits—the wall of quartzite and the seam of clay or shale—has, at some period of the world's history, been subjected to some dynamic force of nature, by which it has been broken up, crushed, disintegrated, and
40 fissured in all directions, so as to destroy, except in three or four places of a few feet each, so far as explorations show, all traces of stratification; thus specially fitting it, according to the testimony of the men of science, to whom we have listened, for the reception of the mineral which, in ages past, came up from the depths below in solution, and was deposited in it. Evidence that the whole mass of limestone has been, at some period, lifted up and moved along the quartzite, is found in the marks of attrition engraved on the rock. This broken, crushed, and fissured condition pervades, to a greater or less extent, the whole body, showing that the same forces which operated upon a part, operated upon the whole, and at the same time. Wherever the quartzite is exposed, the marks of attrition appear. Below the quartzite no ore has penetrated. Above the shale the rock has not been thus broken and crushed. Stratification exists there. If in some isolated places there is found evidence of disturbance, that disturbance has not been sufficient to affect the stratification. The broken, crushed, and fissured condition of the limestone gives it a specific, individual character, by which it can be identified and separated from all other limestone in the vicinity.

In this zone of limestone numerous caves or chambers are found, further distinguishing it from the neighboring rock. The limestone being broken and crushed up as stated, the water from above readily penetrated into it, and, operating as a solvent, formed these caves and chambers. No similar cavities are found in the rock beyond the shale, its hard and unbroken character not permitting, or, at least, opposing such action from the water above.

41 Oxide of iron is also found in numerous places, throughout the zone, giving to the miner assurance that the metal he seeks is in its vicinity.

This broken, crushed, and fissured condition of the limestone, the

presence of the oxides of iron, the caves or chambers we have mentioned, with the wall of quartzite and seam of clay bounding it, give to the zone, in the eyes of the practical miner an individuality, a oneness as complete as that which the most perfect lode in a geological sense ever possessed. Each of the characteristics named, though produced at a different period from the others, was undoubtedly caused by the same forces operating at the same time upon the whole body of the limestone.

Throughout this zone of limestone, as we have already stated, mineral is found in the numerous fissures of the rock. According to the opinions of all the scientific men who have been examined, this mineral was brought up in solution from the depths of the earth below, and would, therefore, naturally be very irregularly deposited in the fissures of the crushed matter, as these fissures are in every variety of form and size, and would also find its way in minute particles in the loose material of the rock. The evidence shows that it is sufficiently diffused to justify giving to the limestone the general designation of mineralized matter—metal-bearing rock. The three scientific experts produced by the plaintiff, Mr. Keyes, Mr. Raymond, and Mr. Hunt, all of them of large experience and extensive attainments, and two of them of national reputation, have given it as their opinion, after examining the ground, that the zone of limestone between the quartzite and the shale constitutes one vein or lode, in the sense in which those terms are used by miners.

Mr. Keyes, who for years was superintendent of the mine of
42 the plaintiff, concludes a minute description of the character and developments of the ground, by stating that, in his judgment, according to the customs of miners in this country and common sense, the whole of that space should be considered and accepted as a lead, lode, or ledge of metal-bearing rock in place.

Dr. Raymond, after giving a like extended account of the character of the ground, and his opinion as to the causes of its formation, and stating with great minuteness the observations he had made, concludes by announcing as his judgment, after carefully weighing all that he had seen, that the deposit between the quartzite and the shale is to be considered as a single vein in the sense in which the word is used by miners—that is, as a single ore-deposit of identical origin, age, and character throughout.

Dr. Hunt, after stating the result of his examination of the ground and his theory as to the formation of the mine, gives his judgment, as follows:

"My conclusion is this: That this whole mass of rock is impregnated with ore; that although the great mass of ore stretches for a long distance above horizontally and along an incline down the foot wall, as I have traced it, from this deposit you can also trace the ore into a succession of great cavities or bonanzas lying irregularly across the limestone, and into smaller caverns or chasms of the same sort; and that the whole mass of the limestone is irregularly

impregnated with the ore. I use the word impregnation in the sense that it has penetrated here and there; little patches and stains, ore-vugs and caverns and spaces of all sizes and all shapes, irregularly disseminated through the mass. * * * I conclude, therefore, that this great mass of ore is, in the proper sense of the word, a great lode, or a great vein, in the sense in which
43 the word is used by miners; and that practically the only way of utilizing this deposit, is to treat the whole of it as one great ore-bearing lode or mass of rock."

This conclusion as to the zone constituting one lode of rock-bearing metal, it is true, is not adopted by the men of science produced as witnesses by the defendant, the Richmond Company. These latter gentlemen, like the others, have had a large experience in the examination of mines, and some of them have acquired a national reputation for their scientific attainments. No one questions their learning or ability, or the sincerity with which they have expressed their convictions. They agree with the plaintiff's witnesses as to the existence of the mineralized zone of limestone with an underlying quartzite and an overlying shale; as to the broken and crushed condition of the limestone, and substantially as to the origin of the metal and its deposition in the rock. In nearly all other respects they disagree. In their judgment the zone of limestone has no features of a lode. It has no continuous fissure, says Mr. King, to mark it as a lode. A lode, he adds, must have a foot wall and a hanging wall, and if it is broad, these must connect at both ends, and must connect downwards. Here there is no hanging wall or foot wall; the limestone only rests as a matter of stratigraphical fact on underlying quartzite, and the shale overlies it. And distinguishing the structure at Ruby Hill from the Comstock lode, the same witness says that the one is a series of sedimentary beds laid down in the ocean and turned up; the other is a fissure extending between two rocks.

44 The other witnesses of the defendant, so far as they have expressed any opinion as to what constitutes a lode, have agreed with the views of Mr. King. It is impossible not to perceive that these gentlemen at all times carried in their minds the scientific definition of the term as given by geologists—that a lode is a fissure in the earth's crust filled with mineral matter—and disregarded the broader, though less scientific definition of the miner who applies the term to all zones or belts of metal-bearing rock lying within clearly marked boundaries. For the reasons already stated, we are of opinion that the acts of Congress use the term in the sense in which miners understand it.

If the scientific definition of a lode, as given by geologists, could be accepted as the only proper one in this case, the theory of distinct veins existing in distinct fissures of the limestone, would be not only plausible, but reasonable; for that definition is not met by the conditions in which the Eureka mineralized zone appears. But

as that definition cannot be accepted, and the zone presents the case of a lode as that term is understood by miners, the theory of separate veins, as distinct and disconnected bodies of ore falls to the ground. It is, therefore, of little consequence what name is given to the bodies of ore in the limestone, whether they be called pipe-veins, rake-veins, or pipes of ore, or receive the new designation suggested by one of the witnesses, they are but parts of one greater deposit, which permeates, in a greater or less degree, with occasional intervening spaces of barren rock, the whole mass of limestone, from the Jackson mine to the Richmond, inclusive.

The acts of Congress of 1866 and 1872 dealt with a practical necessity of miners; they were passed to protect locations on veins or lodes, as miners understood those terms. Instances without
45 number exist where the meaning of words in a statute has been enlarged or restricted and qualified to carry out the intention of the legislature. The inquiry, where any uncertainty exists, always is as to what the legislature intended, and when that is ascertained it controls. In a recent case before the Supreme Court of the United States, singing-birds were held not to be live animals, within the meaning of a revenue act of Congress.—(*Reiche* vs. *Smythe*, 13 Wall., 162.) And in a previous case, arising upon the construction of the Oregon donation act of Congress, the term, a single man, was held to include in its meaning an unmarried woman. (*Silver* v. *Ladd*, 7 Wall., 219.) If any one will examine the two decisions, reported as they are in Wallace's Reports, he will find good reasons for both of them.

Our judgment being that the limestone zone in Ruby Hill, in Eureka district, lying between the quartzite and the shale, constitutes, within the meaning of the acts of Congress, one lode of rock bearing metal, we proceed to consider the rights conveyed to the parties by their respective patents from the United States. All these patents are founded upon previous locations, taken up and improved according to the customs and rules of miners in the district. Each patent is evidence of a perfected right in the patentee to the claim conveyed, the initiatory step for the acquisition of which was the original location. If the date of such location be stated in the instrument, or appear from the record of its entry in the local land office, the patent will take effect by relation as of that date, so far as may be necessary to cut off all intervening claimants, unless the prior right of the patentee, by virtue of his earlier location, has been lost by a failure to contest the claim of the intervening claim-
46 ant, as provided in the act of 1872. As in the system established for the alienation of the public lands, the patent is the consummation of a series of acts, having for their object the acquisition of the title, the general rule is to give to it an operation by relation at the date of the initiatory step, so far as may be necessary to protect the patentee against subsequent claimants to the same property. As was said by the supreme court in the case of *Shepley*

v. *Cowan*, (1st Otto, 338,) where two parties are contending for the same property, the first in time, in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right.

But this principle has been qualified in its application to patents of mining ground, by provisions in the act of 1872, for the settlement of adverse claims before the issue of the patent. Under that act, when one is seeking a patent for his mining location and gives proper notice of the fact as there prescribed, any other claimant of an unpatented location objecting to the patent of the claim, either on account of its extent or form, or because of asserted prior location, must come forward with his objections and present them, or he will afterwards be precluded from objecting to the issue of the patent. While, therefore, the general doctrine of relation applies to mining patents so as to cut off intervening claimants, if any there can be, deriving title from other sources, such perhaps as might arise from a subsequent location of school warrants or a subsequent purchase from the state, as in the case of *Heydenfeldt* v. *Daney Gold Mining Company*, reported in the third of Otto, the doctrine cannot be applied so as to cut off the rights of the earlier patentee, under a later location where no opposition to that location was made under the statute. The silence of the first locator is, under the statute, a
47 waiver of his priority.

But from the view we take of the rights of the parties under their respective patents, and the locations upon which those patents were issued, the question of priority of location is of no practical consequence in the case.

The plaintiff is the patentee of several locations on the Ruby Hill lode, but for the purpose of this action it is only necessary to refer to three of them—the patents for the Champion, the At Last, and the Lupita or Margaret claims. The first of these patents was issued in 1872, the second in 1876, and the third in 1877. Within the end lines of the locations, as patented in all these cases, when drawn down vertically through the lode, the property in controversy falls. Objection is taken to the validity of the last two patents, because the end lines of the surface locations patented are not parallel, as required by the act of 1872. But to this objection there are several obvious answers. In the first place it does not appear upon what locations the patents were issued. They may have been, and probably were, issued upon locations made under the act of 1866, where such parallelism in the end lines of the surface locations was not required. The presumption of the law is, that the officers of the Executive Department specially charged with the supervision of applications for mining patents, and the issue of such patents, did their duty; and in an action of ejectment, mere surmises to the contrary will not be listened to. If, under any possible circumstances, a patent for a location without such parallelism may be valid, the law will presume that such circumstances existed.

A patent of the United States for land, whether agricultural or
48 mineral, is something upon which its holder can rely for peace and security in his possessions. In its potency it is ironclad against all mere speculative inferences. In the second place, the provision of the statute of 1872, requiring the lines of each claim to be parallel to each other, is merely directory, and no consequence is attached to a deviation from its direction. Its object is to secure parallel end lines drawn vertically down, and that was effected in these cases by taking the extreme points of the respective locations on the length of the lode. In the third place, the defect alleged does not concern the defendant, and no one but the government has the right to complain.

The defendant, The Richmond Mining Company, also holds several patents issued to it upon different locations; but in this case it specially relies upon the patents of the Richmond and Tip-Top claims. It is alleged that these patents were issued upon locations made earlier than any upon which the patents to the plaintiff were issued. Assuming this to be the fact, and claiming from it that the patents ante-date in their operation, by relation back to such locations, the patents of the plaintiff; and the further fact that the locations were made under the act of 1866, the defendant relies to defeat the pretensions of the plaintiff. It contends that inasmuch as the croppings of the vein it works are within the surface of its patented locations, it can follow the vein wherever it leads, though it be outside of the end lines of the locations when vertically drawn down through the lode. Its position is that whenever under the law of 1866, a location was made on a lode or vein, a right was acquired to follow the vein wherever it might lead, without
49 regard to the end lines of the location. This position is urged with great persistence by one of the counsel of the defendant, and with the ability which characterizes all his discussions.

The second section of the act of 1866, upon the provisions of which this position is based, provides, "that whenever any person, or association of persons, claims a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to local customs or rules of miners in the district where the same is situated, and having expended, in actual labor and improvements thereon, an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy, or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended, laterally or otherwise, as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

It will be seen by this section that to entitle a party to a patent, his claim must have been occupied and improved according to the local customs or rules of miners of the district, and that his diagram of the same filed in the land office in its extension laterally or otherwise, must be in conformity with them.

The rules of the miners in the Eureka Mining District, adopted in 1865—laws of the district, as they are termed by the miners—provided that claims of mining ground should be made by posting
50 a written notice on the claimant's ledge, defining its boundaries if possible; that each claim should consist of two hundred feet on the ledge, but claimants might consolidate their claims by locating in a common name, if in the aggregate no more ground was claimed than two hundred feet for each name, and that each locator should be entitled to all dips, spurs, and angles connecting with his ledge; and that a record of all claims should be made within ten days from the date of location. The rules also allowed claimants to hold one hundred feet each side of their ledge for mining and building purposes, but declared that they should not be entitled to any other ledge within this surface.

It will be perceived by these rules that they had reference entirely to locations of claims on ledges. It would seem that the miners of the district then supposed that the mineral in the district was only found in veins or ledges, and not in isolated deposits. In February, 1869, new rules were added to those previously passed, authorizing the location of such deposits. These new rules provided that each deposit claim should consist of one hundred feet square, and that the location should take all the mineral within the ground to any depth.

Under these rules square locations and linear locations were made by parties through whom the defendant derives title on what is called the Richmond ledge, and linear locations were made on what is called the Tip-Top ledge with surface locations for mining purposes, both parties claiming with their locations all dips, spurs, and angles. It is only of the linear locations we have occasion to speak; it is under them that the defendant asserts title to the premises in controversy.

51 Now, as neither the rules of miners in Eureka Mining District, nor the act of 1866, *in terms*, speak of end lines to locations made on ledges, nor in terms impose any limitation upon miners, following these veins wherever they may lead, it is contended that no such limitation can be considered as having existed and be enforced against the defendant. The act of 1866, it is said, recognizes the right of the locator to follow his vein outside of any end lines drawn vertically down when it permits him to obtain a patent granting his mine, "together with the right to follow such vein or lode, with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

It is true that end lines are not in terms named in the rules of the miners, but they are necessarily implied, and no reasonable construction can be given to them without such implication. What the miners meant by allowing a certain number of feet on a ledge was that each locator might follow his vein for that distance on the course of the ledge, and to any depth within that distance. So much of the ledge he was permitted to hold as lay within vertical planes drawn down through the end lines of his location, and could be measured anywhere by the feet on the surface. If this were not so, he might by the bend of his vein hold under the surface along the course of the ledge double and treble the amount he could take on the surface. Indeed, instead of being limited by the number of feet prescribed by the rules, he might in some cases oust all his neighbors, and take the whole ledge. No construction is permissible which would substantially defeat the limitation of quantity on a ledge, which was the most important provision in the whole system of rules.

52 Similar rules have been adopted in numerous mining districts, and the construction thus given has been uniformly and everywhere followed. We are confident that no other construction has ever been adopted in any mining district in California or Nevada. And the construction is one which the law would require in the absence of any construction by miners. If, for instance, the state were to-day to deed a block in the city of San Francisco to twenty persons, each to take twenty feet front, in a certain specified succession, each would have assigned to him by the law a section parallel with that of his neighbor, of twenty feet in width cut through the block. No other mode of division would carry out the grant.

The act of 1866 in no respect enlarges the right of the claimant beyond that which the rules of the mining district gave him. The patent which the act allows him to obtain does not authorize him to go outside of the end lines of his claim, drawn down vertically through the ledge or lode. It only authorizes him to follow his vein with its dips, angles, and variations, to any depth, although it may enter land adjoining, that is, land lying beyond the area included within his surface lines. It is land lying on the side of the claim, not on the ends of it, which may be entered. The land on the ends is reserved for other claimants to explore. It is true, as stated by the defendant, that the surface land taken up in connection with a linear location on the ledge or lode is, under the act of 1866, intended solely for the convenient working of the mine, and does not measure the miner's right, either to the linear feet upon its course, or to follow the dips, angles, and variations of the vein,

53 or control the direction he shall take. But the line of location taken does measure the extent of the miner's right. That must be along the general course or strike, as it is termed, of the ledge or lode. Lines drawn vertically down through the ledge or lode at right angles with a line representing this general course, at the ends

of the claimant's line of location, will carve out, so to speak, a section of the ledge or lode, within which he is permitted to work, and out of which he cannot pass.

As the act of 1866 requires the applicant for a patent to file in the local office a diagram of his claim, such diagram must necessarily present something more than the mere linear location. It is intended that it should embrace the surface claimed, for the working of the mine. In this way each of the patents of the parties embraces one or more acres and the fraction of an acre of surface ground and some hundred linear feet on the lode.

The act of 1872, preserves to the miner the rights acquired under the act of 1866, and confers upon him additional rights. Under the act of 1866, he could only hold one lode, or vein, although more than one appeared within the lines of his surface location. The surface ground was allowed him for the convenient working of the lode or vein located and for no other purpose; it conferred no right to any other lode or vein. But the act of 1872, alters the law in this respect; it grants to him the exclusive right of possession to a quantity of surface ground not exceeding a specified amount, and not only to the particular lode or vein located, but to all other veins, lodes, and ledges, the top or apex of which lies within the surface lines of his location, with the right to follow such veins, lodes,
54 or ledges, to any depth. But these additional rights are granted subject to the limitation that in following the veins, lodes, or ledges, the miner shall be confined to such portions thereof, as lie between vertical planes drawn downward through the end lines of his location, and a further limitation upon his right in cases where two or more veins intersect or cross each other. The act in terms annexes these conditions to the possession, not only of claims, subsequently located, but to the possession of those previously located. This fact taken in connection with the reservation of all rights acquired under the act of 1866, indicates that in the opinion of the legislature no change was made in the rights of previous locators by confining their claims within the end lines. The act simply recognized a pre-existing rule, applied by miners to a single vein or lode of the locator, and made it applicable to all veins or lodes found within the surface lines.

Our opinion, therefore, is that both the defendant and the plaintiff, by virtue of their respective patents, whether issued upon locations under the act of 1866, or under the act of 1872, were limited to veins or lodes lying within planes drawn vertically downward through the end lines of their respective locations; and that each took the ores found within those planes at any depth in all veins or lodes, the apex or top of which lay within the surface lines of its locations.

The question of priority of location is therefore, as already stated, of no practical importance in the case. This question can only be important where the lines of one patent overlap those of another patent. Here neither plaintiff nor defendant could pass outside of

the end lines of its own locations, whether they were made
55 before or after those upon which the other party relies. And inasmuch as the ground in dispute lies within planes drawn vertically downward through the end lines of the plaintiff's patented locations, our conclusion is that the ground is the property of the plaintiff, and that judgment must be for its possession in its favor.

The same conclusion would be reached if we looked only to the agreement of the parties made on the 16th of June, 1873. At that time the plaintiff owned the patented claim called the Lookout claim, adjoining on the north, the Richmond claim. The defendant had worked down from an incline in the Richmond and Tip-Top into the ore under the surface-lines of the Lookout patent. The plaintiff thereupon brought an action for the recovery of the ground and the ores taken from it. A compromise and settlement followed, which are contained in an agreement of that date, and were carried out by an exchange of deeds. A map or plat was made showing the different claims held by the two parties. A line was drawn upon this map, on one side of which lay the Champion, the At-Last, and the Margaret claims, and on the other side lay the Richmond and the Lookout claims. By the agreement of the parties, the plaintiff, on the one hand, was to convey to the defendant the Lookout ground, and also all the mining ground lying on the northwesterly side of the line designated, with the ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, on, in, or under the same, and to dismiss all pending actions against the defendant; and on the other hand, the defendant was to pay to the plaintiff the sum of $85,000, and to convey with warranty against its own acts, all its right, title, or interest in and to all the mining
ground situated in the Eureka Mining District, on the south-
56 easterly side of the designated line, and in and to all ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, on, in, or under the same—"it being," says the agreement, "the object and intention of the said parties hereto to confine the workings of the party of the second part (the Richmond Mining Company) to the northwesterly side of the said line continued downward to the centre of the earth, which line is hereby agreed upon as the permanent boundary line between the claims of the said parties."

The deeds executed between the parties the same day were in accordance with this agreement. The deed of the Richmond Mining Company to the plaintiff conveyed all the mining ground lying on the southeasterly side of the designated line, "together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed."

The line thus designated extended down in a direct line along the dip of the lode would cut the Potts chamber, and give the ground in dispute to the plaintiff. That it must be so extended necessarily

follows from the character of some of the claims it divides. As the Richmond and the Champion were vein or lode claims, a line dividing them must be extended along the dip of the vein or lode, so far as that goes, or it will not constitute a boundary between them. All lines dividing claims upon veins or lodes necessarily divide all that the location on the surface carries, and would not serve as a boundary between them if such were not the case. The plaintiff would, therefore, be the owner of the ground in dispute by
57 the deed of the defendant, even if it could not assert such ownership solely upon its patented locations. Our finding, therefore, is for the plaintiff, and judgment must be entered thereon in its favor for the possession of the premises in controversy.

FIELD, *Presiding Justice.*
SAWYER, *Circuit Judge.*
HILLYER, *District Judge.*

(Endorsed:) Filed Sept. 17, 1877. T. J. Edwards, clerk.

58 *Findings.*

In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

THE EUREKA CONSOLIDATED MINING COMPANY, Plaintiff,
*vs.*
THE RICHMOND MINING COMPANY ET AL., Defendants.

This cause coming on for trial before the court, and the parties appearing by their attorneys, and having in open court and by their stipulation in writing filed with the clerk waived a trial by jury, and the court having duly heard and considered the evidence, oral and documentary, offered by the respective parties, and having duly deliberated thereon, finds the following facts, viz:

1st. That the plaintiff, the Eureka Consolidated Mining Company, is a corporation formed and existing under and by virtue of the laws of the State of California.

2d. That the defendant, the Richmond Mining Company of Nevada, is a corporation formed and existing under and by virtue of the laws of the State of Nevada.

3d. That the mining ground and property described in the complaint and in controversy in this action was a part of the
59 mineral land of the public domain of the United States until the title thereof passed out of the United States, as hereinafter described.

4th. That the mining ground in controversy is situated in a hill known as Ruby Hill, which is a spur of a mountain called Prospect mountain, and is distant about two miles from the town of Eu-

reka, in Nevada, and is within the mining district called the Eureka Mining District; that along and through this hill, for a distance slightly exceeding a mile, and extending in a northwesterly and southeasterly direction, is a zone of limestone, in which, at different places throughout its length, mineral is found. Underlying this zone, on the southerly side, is a well-defined, unbroken foot wall of quartzite several hundred feet thick throughout its entire extent, so far as explored—and the explorations have been extensive—which foot wall of quartzite has a general dip to the north at an angle of about forty-five degrees, subject to some local variations. On the northerly side is an overhanging wall or belt of shale, or clay, also well defined and generally unbroken, which dips at an angle of about eighty degrees, and varies in thickness from less than an inch to seventy or eighty feet. At the easterly end of this zone
60 these walls of quartzite and shale approach so closely as to be separated by a bare seam less than an inch in thickness. From that point they diverge until on the surface of the Eureka mine they are about five hundred feet, and on the surface of the Richmond mine they are about eight hundred feet apart. At some depth under the surface these two walls thus bounding the zone of limestone in question, if they continue to descend at the same angle, must come together. In some of the lower levels worked they are now only from two to three hundred feet apart. The zone of limestone found between these two limits—the wall of quartzite on the one side and belt or wall of shale or clay on the other—has at some period since its original deposit been subjected to some dynamic force of nature, by which it has been broken up, crushed, disintegrated, and fissured in all directions so as to destroy, except in some few places of a few feet each, so far as explorations show, all traces of stratification, thus totally changing its original structure and character, and thereby specially fitting it for the reception of the mineral which in ages past was deposited there. This broken, crushed, fissured, disintegrated, and totally altered condition pervades to a great extent the whole body. Below the quartzite no ore has penetrated. Above the shale the rock has not been thus
61 broken, crushed, or otherwise altered. Stratification exists there, and there has been no sufficient disturbance to affect its stratification or original structure. The broken, crushed, fissured, and generally altered condition of the limestone within the zone in question gives it a specific, individual, distinctive character, by which it can be identified and separated from all other limestone in the vicinity. In this zone of metamorphosed limestone numerous caves or chambers are found further distinguishing it from the neighboring rock. No similar cavities are found in the rock beyond the shale. This zone of limestone is further distinguished from the rock beyond by being impregnated with and discolored by oxides of iron. Throughout this altered zone of limestone mineral is found in the numerous fissures, caverns, and cavities, and in the

loose material of the rock in various forms, appearing sometimes in a series or succession of ore-bodies more or less closely connected, sometimes in apparently isolated chambers, and in others in small bodies, vuggs, and in scattered grains. Although barren limestone sometimes intervenes, the mineral is generally diffused through the zone so as to render the whole mineralized matter metal-
62 bearing rock. Bodies of ore appear in croppings on the surface at various points throughout the whole length, exceeding a mile, from the Jackson to the Richmond mine, along which line of croppings various claims have been located by miners. No considerable amount or indications of ore have been found within a mile either north or south of this zone. This zone of crushed, altered, and mineralized limestone, bounded by the foot wall of quartzite below, and the overhanging belt of clay or shale on the other side, is a lode or ledge of metal-bearing rock within the meaning of those terms as used by practical miners and as understood by those familiar with the subject of mining residing in the mining regions of the country.

5th. That on the 19th day of September, A. D. 1864, the miners of the said Eureka Mining District adopted certain rules and regulations for that district, a copy of which is hereto annexed, marked Exhibit "A," and made a part hereof, and the same have ever since been in force and effect in said district.

6th. That on the 27th day of February, 1869, the miners of said district added new rules and regulations to those previously passed, a copy of which is hereunto annexed, marked Exhibit "B," and made part hereof, which new rules and regulations have ever
63 since formed a part of the rules and regulations of said mining district.

7th. That under these rules and regulations various mining locations were made upon the lode above described, upon which locations patents were subsequently issued by the United States to the plaintiff. Those patents are hereto annexed, marked Exhibits "C," "D," "E," "F," "G," "H," "I," and "J," and are made a part hereof.

8th. That of the several locations made as aforesaid, that of the mining claim called the Champion was made on the 23d day of May, A. D. 1870, on which day there was recorded in the mining records of said district a notice of the location, a copy of which record is hereto annexed, marked Exhibit "K," and made a part hereof.

9th. That the patent hereto annexed, marked Exhibit "L," and made a part hereof, was issued to the plaintiff at the time therein stated.

10th. That under said rules and regulations of the Eureka Mining District above described, other locations were taken up on said lode by parties upon which locations patents were afterwards issued to the defendant. Copies of said patents, marked Exhibits "R" and "T," are hereto annexed and made a part hereof.

64 11th. That on the 20th day of September, A. D. 1869, there was recorded in the mining records of said district a notice of location of a mining claim called the Richmond, and also a notice of location of a mining claim called the Tip-Top, copies of which records are hereunto annexed, marked, respectively, Exhibits "O" and "P," and made part hereof.

12th. That on the 29th day of May, A. D. 1869, there was recorded in the mining records of said district a notice of location of a mining claim called the "Lookout," a copy of which is hereunto annexed, marked Exhibit "G," and made a part hereof.

13th. That on the 26th day of June, A. D. 1873, the defendant, the grantee of the parties named as locators in the said recorded notice of location of the Richmond mining claim, applied, under the acts of Congress, for a patent for certain mining property described in the patent hereinbefore referred to, marked Exhibit "R," and upon said application received the said patent.

14th. That on the — day of ———, A. D. 1873, the defendant, the grantee of the parties named as locators in the recorded notice of location of the Tip-Top mining claim, applied, under the acts of Congress, for a patent for certain mining property described in the patent hereinbefore referred to, marked Exhibit "T," and
65 upon said application received the said patent.

15th. That on the 2d day of October, 1876, and the 7th day of January, 1877, respectively, the grantees and predecessors of the corporation defendant made locations of two certain mining claims, respectively called the "Utah" and "Arctic," copies of which are hereunto annexed and marked respectively Exhibits "M" and "N," and made a part hereof.

16th. That the maps hereto annexed marked "U" and "V" correctly delineate the surface embraced within the lines of the respective patents of the parties plaintiff and defendant and the surfaces of the "Utah" and "Arctic" claims of defendant and are substantially correct in representing what they purport to represent.

17th. That the mining ground in dispute is situated within the lode or ledge as hereinbefore described, and within planes drawn vertically down through the end lines of the plaintiff's patented location of the Champion claim, and within planes drawn vertically down through the extreme points of the patented locations of the At Last and the Lupita or Margaret claims at right angles to the course or strike of the said lode or ledge, and produced so as to follow
66 the dip of the lode. The top or apex of said lode is within the surface lines of said patents to the plaintiff, and said lode dips at right angles to its course, and on such dip extends under the surface of the "Utah" and "Arctic" claims of defendant.

18th. That prior to the 26th day of April, A. D. 1871, the deed hereunto annexed, marked Exhibit "W," and made a part hereof, was duly executed and delivered.

19th. That prior to the 16th day of June, A. D. 1873, the plaintiff was the holder of the Lookout patent hereto annexed, marked Exhibit "L," and the owner of all the mining ground and the rights and privileges thereby granted, and there was a controversy between the plaintiff and the defendant, in which the defendant claimed that by virtue of a location upon which said Richmond patent was afterwards issued, it was entitled to follow that portion of said lode afterwards granted by said Richmond patent, under the surface ground granted by said Lookout patent, and indefinitely on its dip drawn downwards, and thereupon the agreement hereto annexed, marked Exhibit "X," and the deeds hereto annexed, marked Exhibits "Y" and "Z," and made a part hereof, were duly executed and delivered to the respective parties.

67 20th That the plaintiff has never parted with or lost or divested itself of any of the premises or rights granted to it by said several patents to the plaintiff, except as conveyed by the deeds hereunto annexed, marked Exhibits "W" and "Y," and the compromise agreement hereto annexed, marked Exhibit "X."

21st. That the dividing line between the parties mentioned in the annexed agreement marked "X" and mentioned in their respective deeds, extended downwards in a direct line along the dip of the lode, places the mining ground in dispute on the northeasterly side of the line, and the deed of the defendant to the plaintiff conveyed all the mining ground lying on that side, together with all the dips, spurs, and angles, and also the metals, ores, gold, and silver-bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or thereunto usually had and enjoyed.

22d. That planes drawn down vertically through the end lines of any of the patented locations of the defendant do not embrace within them the mining ground in dispute.

23d. That the defendant, before and at the time of the commencement of this action, was in possession of the mining

68 ground in dispute, described in the complaint, and it withheld and still does withhold the possession thereof from the plaintiff, and that the value of said mining ground amounts to several hundred thousand dollars.

24th. That all issues of fact, upon which there is no specific finding herein, are found for the plaintiff.

And from the foregoing facts the court finds as a conclusion of law that the plaintiff was the owner of the mining ground in dispute at the time the present action was commenced, and became thus owner, upon the issue to it of the patents to the Champion, At Last, and Margaret or Lupita mines, and still is such owner, and that the defendant, from the issue of said patents, has wrongfully withheld and still wrongfully withholds the possession of the premises from the plaintiff.

It is therefore ordered and adjudged that the plaintiff have judg-

ment against the defendant for the possession of the mining ground in dispute as described in the complaint herein, with costs to be taxed.

September 17th, 1877. FIELD, *Presiding Justice.*
SAWYER, *Circuit Judge.*
69 HILLYER, *District Judge.*

70 "EXHIBIT A."

*Laws of Eureka Mining District.*

Sec. 1. This district shall be known as the Eureka Mining District, and shall be bounded as follows, viz:

Beginning at the place where Eureka creek or canyon crosses Simpson's old road, as laid out by him in the year 1859, thence following said road westerly to a spring in the Middle Gate, thence southerly along the summit of the mountains to the first valley, thence easterly along the base of the mountains to the Simpson's old road, thence northerly and along Simpson's old road to the place of beginning.

Sec. 2. There shall be a recorder elected at this meeting, who shall hold his office until the first Monday of September, A. D. 1865, he may appoint a deputy or deputies, for whose official acts he shall be responsible. The recorder or one of his deputies shall go upon the ground at the request of the locator and see that the locator measures and stakes off his claim or claims when visible. The recorder or his deputy shall call all meetings when requested by ten claim holders of the district, and preside at the same. The recorder shall keep in a suitable book or books a faithful and true re-
71 cord of all claims brought to him for that purpose if such claims do not conflict with other claims; he shall record all claims in the order of their presentation, for which service he shall receive seventy-five cents for each claim recorded; he shall record all certificates of work done on claims, when he is satisfied the necessary work has been done; he shall give certificates of location or abstracts of title, for which service he shall be entitled to receive fifty cents; also to keep his books for the inspection of those interested in the mines of the district; he shall deliver his books to his lawful successor. All examinations of his books and papers to be made in his presence or that of a deputy.

Sec. 3. Claims of mining ground shall be made by posting a written notice on the claimant's ledge, defining its boundaries if visible. A notice of mining ground by companies or individuals on file in the recorder's office shall be equivalent to the record of the same; each claim shall consist of two hundred feet on the ledge, but claimants may consolidate their claims by locating in a common name so that in the aggregate no more ground is claimed than two hundred feet for each name. Claimants may hold one hundred feet on each side of their ledge for mining and building purposes,

but shall not be entitled to any ledge within said distance by virtue hereof; each locator shall be entitled to all dips, spurs, and angles connecting with his ledge. All claims shall be recorded within ten days from the date of location.

Sec. 4. Whenever ($100) one hundred dollars worth of labor shall have been expended on any company's claim or ($25) on any individual's claim, the same shall be deemed a fee simple in the owners or owner thereof, and their or his grantee or assigns, and shall not thereafter be subject to relocation by other parties except by producing to the recorder a writing acknowledging the abandonment thereof.

Sec. 5. All persons holding mining ground at the present time in this district and all persons hereafter and previous to the date herein mentioned, shall hold the same exempt from relocation until the first Monday of June, A. D. 1865. These rules and laws may be altered or amended by a two-thirds vote of those owning claims or mining ground in this district, after twenty days notice of such intention shall have been given in the "Reese River Reville" or some other paper published in Lander county, and shall have been posted in the most public place in this district.

Sec. 6. The laws, rules, and regulations of the Reese River Mining District, so far as not inconsistent with the foregoing rules and laws, shall, and the same are hereby extended to and over this district, and made the laws, rules, and regulations thereof.

Sec. 7. Elections shall be held *viva voce* unless otherwise determined by those present at the meeting—at an election held in the aforesaid district on the nineteenth day of September, A. D. 1864, the foreging laws and rules for the district were adopted, and the undersigned duly elected recorder.

G. J. TANNEHILL, *President.*
E. A. PHELPS, *Secretary.*

EUREKA MINING DISTRICT, *June* 5, 1865.

Pursuant to notice a meeting of the miners of this district was this day called; on motion, it was ordered that after this date, the recorder's fees for recording each claim or claims shall be one dollar, and also for issuing certificates of title one dollar, and it is also ordered that after this date no claims that is now on record or that may hereafter be placed on record shall be relocatable before the fourth day of September, 1865, if there shall be as much as one dollar's worth of labor expended on the same. All of which was unanimously adopted.

G. J. TANNEHILL,
*Secretary and Recorder.*

EUREKA MINING DISTRICT, *Sept. 4th*, 1865.

Pursuant to notice, a meeting of the miners of Eureka District was this day called. On motion it was ordered that after this date

the recorder's fees shall be one dollar, and also for issuing certificates of title one dollar. And it is also ordered that after this date no claims that is now on record shall not be relocatable before the fourth day of June, 1866, even if there shall be as much as one dollar's worth of labor expended on the same. It was also ordered that G. J. Tannehill be re-elected recorder of this, Eureka District. All of which was unanimously adopted.

*President*, DENIS KENELY.
*Secretary*, ELISHA BREWER.

72 "EXHIBIT B."

EUREKA DISTRICT, *March 2d*, 1867.

Pursuant to notice a meeting of the miners of this district was called at the office of the Tannehill Company's. On motion it was ordered that A. H. Everett was chosen chairman and G. W. Cravens, secretary, also on motion it was ordered that Moses Wilson was elected recorder of said district, also that the old laws be adopted. All of which was unanimously adopted.

A. H. EVERETT, *Chairman*.
G. W. CRAVENS, *Secretary*.

*Deposit Locations.*

EUREKA DISTRICT, *February 27th*, 1869.

At a meeting of the miners of Eureka District, called on the twenty-seventh of February, 1869, S. J. Hope was chosen chairman, and C. Stedefeldt, secretary.

On motion, the following resolutions and amendments to the old laws of the district were adopted:

Whereas, explorations have made it evident that the mineral in Eureka District is found more frequently in the form of deposits than in fissure-veins or ledges, and the laws of the district do not provide for the location of such deposits; and

Whereas, the deficiency in the law may give rise to expensive litigation, as it is the case in White Pine, a district of similar character, the miners of Eureka District have adopted the following amendments to the old laws of the district:

Section 1. Claims of mineral ground may be located as deposits.

Sec. 2. A deposit claim shall consist of a piece of ground 100 feet square, and such a piece of ground shall be designated as a "square."

Sec. 3. The locator of a square claims all the minerals within their ground to an indefinite depth.

Sec. 4. The discover of a deposit shall be entitled to two squares.

Sec. 5. The claims taken up on one deposit shall not cover more ground than eight squares.

Sec. 6. A prospector shall be allowed to make a deposit location, and have the same filed for record without having discovered ore

on the surface, but his location shall not be finally recorded, if he does not find and expose mineral within thirty days from the time of filing said location for record.

Sec. 7. The corners of deposit ground shall be designated by stone monuments or stakes.

Sec. 8. Ten dollars' worth of work for each square shall hold the ground for six months.

On motion, A. Monroe was elected recorder.

SAMUEL J. HOPE, *Chairman.*
CHARLES A. STETEFELDT, *Secretary.*

74 "EXHIBIT C."

General Land Office No. 390. Mineral Certificate No. 80.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company upon the Champion lode, bearing silver, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress, the Eureka Consolidated Mining Company did, on the first day of April, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. Eighty, in the series of said office, designated by the surveyor-general as lot number thirty-eight (38), forming a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing one (1) acre and six-tenths (6-10) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at a post marked "No. 1, U. S. Survey, No. 38," from which a prominent rocky point, No. 2, the summit of Silver Hill bears south seventy-one (71) degrees thirty-seven (37) minutes, east at the distance of seven thousand and fifty-one (7,051) feet. The flag-staff in the town of Eureka bears north sixty (60) degrees forty-six (46) minutes east, at the distance of ten thousand one hundred and seventy-nine (10,179) feet, and post No. 4 of survey No. 37,

made for the claim of the Eureka Consolidated Mining Company upon the Buckeye lode, bears north thirty-eight (38) degrees east, at the distance of fifty (50) feet; thence from said post marked "No. 1, U. S. Survey, No. 38," south thirty-eight (38) degrees west, along the northwestern boundary of said survey No. 37, two hundred (200) feet to post marked "No. 2, U. S. Survey, No. 38," the same being post No. 3 of said survey No. 37; thence north fifty-two (52) degrees west, three hundred and fifty (350) feet to post marked "No. 3, U. S. Survey, No. 38;" thence north thirty-eight (38) degrees east, two hundred (200) feet to post marked "No. 4, U. S. Survey, No. 38," from which the highest point of Ruby Hill, No. 1, bears north fifty-one (51) degrees thirty (30) minutes east, at the distance of eighty-eight (88) feet; thence south fifty-two (52) degrees east, three hundred and fifty (350) feet to the place of beginning, containing one (1) acre and six-tenths (6-10) of an acre of land, more or less, as represented by yellow shading in the following plat:

[Here follows map, marked page 75.]

76 Now, know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number thirty-eight (38), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of three hundred and fifty (350) linear feet of the said Champion vein, lode, ledge, or deposit as hereinbefore described throughout its entire depth, although it may enter the land adjoining, and of all veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances

of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number thirty-eight (38), with three hundred and fifty (350) linear feet of the Champion vein, lode, ledge, or deposit throughout their entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-seventh.

[SEAL U. S. LAND OFFICE.]

By the President:
U. S. GRANT,
By Z. B. STURGUS,
*Asst. Secretary.*

C. B. BRYNTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 270 to 276.

Recorded at request of Wells, Fargo & Co., Oct. 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page 503.

H. J. BIDLEMAN, *Recorder.*

77 "EXHIBIT D."

General Land Office No. 2,068. Mineral Certificate No. 145.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the revised statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company upon the At Last lode, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of the said revised statutes of the United States, the Eureka Consolidated Mining Company did, on the twenty-ninth day of March, A. D. 1873, enter and pay for said mining claim or premises, being Mineral Entry No. 145, in the series of said office, designated by the surveyor-general as lot No. forty-seven, embracing a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Eureka and State of Nevada, in the district of lands subject to sale at Eureka, formerly Austin, containing one (1) acre and seventy-seven hundredths (77-100) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at corner No. 1, a post marked "No. 1, U. S. Survey, No. 47," the same being corner No. 1 of survey No. 43, patented to the Eureka Consolidated Mining Company, with their claim upon the Lookout lode, from which the flag-staff in the town of Eureka bears north sixty-three (63) degrees one (1) minute east at the distance of ten thousand one hundred and forty (10,140) feet; thence from said corner No. 1 south fifty-two (52) degrees east, four hundred and ten and two-tenths ($410\frac{2}{10}$) feet to corner No. 2, a post marked "No. 2, U. S. Survey, No. 47," on northwesterly boundary of survey No. 40, patented to the Eureka Consolidated Mining Company, with their claim upon the Sentinel lode; thence south forty-nine (49) degrees thirty (30) minutes west, along boundary of said survey No. 40, fifty-one (51) feet to corner No. 3, a post marked "No 3, U. S. Survey, No. 47," the same being corner No. 3 of said survey No. 40 and corner No. 5 of survey No. 41, patented to the Eureka Consolidated Mining Company, with their claim upon the Mammoth lode; thence south thirty-eight (38) degrees west, one hundred (100) feet to corner No. 4, a post marked "No 4, U. S. Survey, No. 47," the same being corner No. 4 of said survey No. 41, and on northeasterly boundary of survey No. 37, patented to the Eureka Consolidated Mining Company, with their claim upon the Buckeye lode, from which the Wind Sail shaft bears south fourteen (14) degrees fifteen (15) minutes west at the distance

of one hundred and fourteen (114) feet; thence from said corner No. 4, north fifty-two (52) degrees west, along boundary of said survey No. 37, fifty (50) feet to corner No. 5, a post marked "No. 5, U. S. Survey, No. 47," the same being corner No. 4 of said survey No. 37; thence south thirty-eight (38) degrees west along northwesterly boundary of said survey No. 37 fifty (50) feet to corner No. 6, a post marked "No. 6. U. S. Survey, No. 47," the same being corney No. 1 of survey No. 38, patented to the Eureka Consolidated Mining Company, with their claim upon the Champion lode; thence north fifty-two (52) degrees west along the northeasterly boundary of said survey No. 38, three hundred and fifty (350) feet to corner 7, a post marked "No. 7, U. S. Survey, No. 47," the same being corner No. 4 of survey No. 38, and corner No. 2 of said survey No. 43, from which the highest point of Ruby Hill, No. 1, bears north fifty-one (51) degrees thirty (30) minutes east, at the distance of eighty-eight (88) feet; thence from said corner No. 7 north thirty-eight (38) degrees east, along the southeasterly boundary of said survey No. 43, two hundred (200) feet, to the place of beginning; containing one (1) acre and seventy-seven hundredths ($\frac{77}{100}$) of an acre of land, more or less, and embracing four hundred (400) linear feet of said At Last lode, as represented by yellow shading in the following plat:

[Here follows map, marked page 78.]

78½ Now know ye, that the United States of America, in consideration of the premises, and in conformity with the said revised statutes of the United States, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number forty-seven, embracing a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of four hundred (400) linear feet of the the said At Last vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining, and also of all otner veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will inter-

sect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevtheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number forty-seven, with four hundred (400) linear feet of the At Last vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depths as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent* and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States the one hundred and first.

By the President:

[SEAL. U S. GENERAL LAND OFFICE.] U. S. GRANT,

By D. D. CONE, *Secretary.*

S. W. CLARK,
*Recorder of the General Land Office.*

Recorded Vol. 24, pages 288 to 293, inclusive.

79 "EXHIBIT E."

General Land Office No. 2,066. Mineral Certificate No. 144.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the revised statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company, upon the Nuget lode, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of the said revised statutes of the United States, the Eureka Consolidated Mining Company did, on the twenty-ninth day of March, A. D. 1873, enter and pay for said mining claim or premises, being Mineral Entry No. 144, in the series of said office, designated by the surveyor-general as lot number forty-six, embracing a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Eureka and State of Nevada, in the district of lands subject to sale at Eureka, formerly Austin, containing forty-four hundredths (44-100) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at corner No. 1, a post marked "No. 1, U. S. Survey, No. 46," the same being corner No. 3 of survey No. 37, patented to the Eureka Consolidated Mining Company, with their claim upon the Buckeye lode, corner No. 2 of survey No. 38, patented to the Eureka Consolidated Mining Company, with their claim upon the Champion lode, and corner No. 4 of survey No. 42, patented to the Eureka Consolidated Mining Company, with their claim upon the Savage lode, from which Ruby Hill bears north eleven (11) degrees west at the distance of four hundred and thirty-six (436) feet; flagstaff in the town of Eureka bears north (60) degrees eighteen (18) minutes east at the distance of ten thousand three hundred and seventy (10,370) feet; Keyes' shaft bears south seventy-seven (77) degrees thirty (30) minutes east at the distance of five hundred and sixteen (516) feet, and the Nuget shaft bears north sixty-five (65) degrees thirty (30) minutes west at the distance of sixty (60) feet; thence from said corner No. 1 south thirty-eight (38) degrees west, along boundary of said survey No. 42 one hundred (100) feet to corner No. 2, a post marked "No. 2, U. S. Survey, No. 46," the same being corner No. 2 of said survey No. 42; thence north fifty-two (52) degrees west, one hundred and eighty-five and four-tenths ($185\frac{4}{10}$) feet to corner No. 3, an iron pin in road; thence north twenty-eight (28) degrees thirty (30) minutes east, one hundred and one and four-tenths ($101\frac{4}{10}$) feet to corner No. 4, a post marked "No. 4, U. S.

Survey, No. 46;" thence south fifty-two (52) degrees east, along southwesterly boundary of said survey No. 38 two hundred and two and four-tenths ($202\frac{4}{10}$) feet to the place of beginning, containing forty-four hundredths (44-100) of an acre of land, more or less, and embracing two hundred and two and two-tenths ($202\frac{2}{10}$) linear feet of said Nuget lode, to wit: one hundred and forty-four (144) linear feet northwesterly, and fifty-eight and two-tenths ($58\frac{2}{10}$) linear feet southeasterly from the Nuget shaft, as represented by yellow shading in the following plat:

[Here follows map, marked page 80.]

81 Now know ye, that the United States of America, in consideration of the premises, and in conformity with the said revised statutes of the United States, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number forty-six, forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of two hundred and two and two-tenths (202 2-10) linear feet of the said Nuget vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number forty-six, with two hundred and two and two-tenths (202 2-10) linear feet of the Nuget vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits

throughout their entire depth as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States the one hundred and first.

By the President:

[SEAL U. S. GENERAL LAND OFFICE.] U. S. GRANT,
By D. D. CONE, *Secretary.*

S. W. CLARK,
*Recorder of the General Land Office.*

Recorded Vol. 24, pages 276 to 281, inclusive.

82 "EXHIBIT F."

General Land Office No. 391. Mineral Certificate No. 109.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the

claim of the Eureka Consolidated Mining Company upon the Savage lode, bearing silver, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress the Eureka Consolidated Mining Company did, on the fourth day of September, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. 109, in the series of said office, designated by the surveyor-general as lot number forty-two (42), forming a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing one (1) acre and four-tenths (4-10) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at a post marked "No. 1, U. S. Survey, No. 42," the same being post No. 2 of survey No. 37, made for the Eureka Consolidated Mining Company, upon the Buckeye lode, from which the highest point of Ruby Hill, No. 1, bears north thirty-four (34) degrees fifty-five (55) minutes west, at the distance of nine hundred and seventy-two (972) feet. A prominent rocky point, No. 2, the summit of Silver Hill bears south seventy-five (75) degrees one (1) minute east, at the distance of six thousand five hundred and sixty-five (6,565) feet, and the flag-staff in the town of Eureka bears north fifty-seven (57) degrees ten (10) minutes east, at the distance of ten thousand one hundred and sixty-two (10,162) feet; thence from said post marked "No. 1, U. S. Survey, No. 42," south thirty-eight (38) degrees west, one hundred (100) feet to post marked "No. 2, U. S. Survey, No. 42;" thence north fifty-two (52) degrees west, six hundred (600) feet to post marked "No. 3, U. S. Survey, No. 42;" thence north thirty-eight (38) degrees east, one hundred (100) feet to post marked "No. 4, U. S. Survey, No. 42," the same being post No. 3 of said survey No. 37, and post No. 2 of survey No. 38, made for the Eureka Consolidated Mining Company's claim, upon the Champion lode; thence south fifty-two (52) degrees east, six hundred (600) feet to the place of beginning, containing one (1) acre and four-tenths (4-10) of an acre of land, more or less, as represented by yellow shading in the following plat:

[Here follows map, marked page 83.]

84 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number forty-two (42), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said sur-

vey not herein expressly excepted from these presents, and of six hundred (600) linear feet of the said Savage vein, lode, ledge, or deposit as hereinbefore described throughout its entire depth, although it may enter the land adjoining, and of all veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number forty-two (42), with six hundred (600) linear feet of the Savage vein, lode, ledge, or deposit throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-seventh.

By the President:

[SEAL U. S. GENERAL LAND OFFICE.] U. S. GRANT,
By Z. B. STURGUS,
*Asst. Secretary.*

C. B. BRYNTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 277 to 283.

Recorded at request of Wells, Fargo & Co., Oct. 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page 506.

H. J. BIDLEMAN, *Recorder.*

85 "EXHIBIT G."

General Land Office No. 389. Mineral Certificate No. 79.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company upon the Buckeye lode, bearing silver, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress, the Eureka Consolidated Mining Company did, on the first day of April, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. Seventy-nine, in the series of said office, designated by the surveyor-general as lot number thirty-seven (37), forming a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing three (3) acres and five-tenths (5-10) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at a post marked "No. 1, U. S. Survey, No. 37," from which the highest point of Ruby Hill, No. 1, bears north forty-nine (49) degrees forty-eight (48) minutes west, at the distance of nine hundred and thirty (930) feet. A prominent rocky point, No. 2, the summit of Silver Hill bears south seventy-three (73) degrees east, at the distance of six thousand four hundred and seventy-one (6,471) feet. The flag-staff in the town of Eureka bears north fifty-seven (57) degrees forty (40) minutes east, at the distance of nine thousand nine hundred and eighteen (9,918) feet, and the centre of the shaft on the Tennyson lode bears south thirty-five (35) degrees west, at the distance of one hundred and fifty-six (156) feet; thence from said post marked "No. 1, U. S. Survey, No. 37," south thirty-eight (38) degrees west, two hundred and fifty (250) feet to post marked "No. 2, U. S. Survey, No. 37;" thence north fifty-two (52) degrees west, six hundred (600) feet to post marked "No. 3, U. S. Survey, No. 37;" thence north thirty-eight (38) degrees east, two hundred and fifty (250) feet to post marked "No. 4, U. S. Survey, No. 37;" thence south fifty-two (52) degrees east, six hundred (600) feet to the place of beginning; containing three (3) and five-tenths (5-10) of an acre, more or less, as represented by yellow shading in the following plat:

[Here follows map, marked page 86.]

87 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number thirty-seven (37), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of six hundred (600) linear feet of the said Buckeye vein, lode, ledge, or deposit as hereinbefore described throughout its entire depth, although it may enter the land adjoining, and of all veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or

possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number thirty-seven (37), with six hundred (600) linear feet of the Buckeye vein, lode, ledge, or deposit throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-seventh.

By the President:

[SEAL U. S. GENERAL LAND OFFICE.]

U. S. GRANT,
By Z. B. STURGUS,
*Asst. Secretary.*

C. B. BRYNTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 263 to 269.

Recorded at request of Wells, Fargo & Co., Oct. 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page 509.

H. J. BIDLEMAN, *Recorder.*

88 "EXHIBIT H."

General Land Office No. 383. Mineral Certificate No. 108.

The United States of America. To all to whom these present shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company upon the Mammoth lode, bearing silver, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress, the Eureka Consolidated Mining Company did, on the fourth day of September, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. 108, in the series of said office, designated by the surveyor-general as lot number forty-one (41), forming a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing one (1) acre and six-tenths (6-10) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at post marked "No. 1, U. S. Survey, No. 41," the same being post No. 2 of survey No. 40, made for the Eureka Consolidated Mining Company upon the Sentinel lode, from which a prominent rocky point, No. 2, the summit of Silver Hill bears south seventy-two (72) degrees forty-two (42) minutes east, at the distance of six thousand two hundred and seventy-one (6,271) feet. The highest point of Ruby Hill, No. 1, bears north fifty-five (55) degrees twenty (20) minutes west, at the distance of eleven hundred and nine (1109) feet. The flag-staff in the town of Eureka bears north fifty-six (56) degrees fifty-three (53) minutes east, at the distance of nine thousand seven hundred and sixty-five (9,765) feet; thence from said post No. 1 south thirty-eight (38) degrees west, fifty-four (54) feet to post "No. 2, U. S. Survey, No. 41;" thence north seventy-six (76) degrees forty-five (45) minutes west, one hundred and ten (110) feet to post marked "No. 3, U. S. Survey, No. 41;" thence north fifty-two (52) degrees west, seventy-seven and one-half (77½) feet to post No. 1 of survey No. 37, made for the claim of the Eureka Consolidated Mining Company, on the Buckeye

lode, six hundred and twenty-seven and one-half (627½) feet to post marked "No. 4, U. S. Survey, No. 41," on northeastern boundary of said survey No. 37; thence north thirty-eight (38) degrees east, one hundred (100) feet to post marked "No. 5, U. S. Survey, No. 41," the same being post No. 3 of said survey No. 40; thence south fifty-two (52) degrees east, seven hundred and twenty-seven (727) feet and one-half (½) of a foot to the place of beginning; containing one (1) acre and six-tenths (6-10) of an acre of land, more or less, as represented in the following plat:

[Here follows map, marked page 89.]

90 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number forty-one (41), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of seven hundred and twenty-seven and one-half linear feet of the said Mammoth vein, lode, ledge, or deposit as hereinbefore described throughout its entire depth, although it may enter the land adjoining, and of all veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number forty-one (41), with seven hundred and twenty-seven and one-half linear feet of the Mammoth vein, lode, ledge, or deposit throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout

their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the third day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-sixth.

By the President:

[SEAL U. S. GENERAL LAND OFFICE.] U. S. GRANT,
By J. PARRISH, *Secretary.*
C. B. BRYNTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 228 to 233.

Recorded at request of Wells, Fargo & Co., Oct 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page 500.

H. J. BIDLEMAN, *Recorder.*

91 "EXHIBIT I."

General Land Office No. 382. Mineral Certificate No. 101.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, ap-

proved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company upon the Sentinel lode, bearing silver, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress, the Eureka Consolidated Mining Company did, on the fifth day of July, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. 101, in the series of said office, designated by the surveyor-general as lot number forty (40), forming a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing three (3) acres and twenty-five hundredths (25-100) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes, east, to wit:

Beginning at a post marked "No. 1, U. S. Survey, No. 40," from which a prominent rocky point, No. 2, the summit of Silver Hill bears south seventy-one (71) degrees east, at the distance of six thousand two hundred and two (6,202) feet, and the flag-staff in the town of Eureka bears north fifty-seven (57) deg. seventeen (17) minutes east, at the distance of nine thousand five hundred and seventy-five (9,575) feet; thence south thirty-eight (38) deg. west, two hundred (200) feet to post marked "No. 2, U. S. Survey, No. 40," from which post No. 1 of survey No. 37, made for the claim of the Eureka Consolidated Mining Company upon the Buckeye lode, bears north eighty-one (81) deg. thirty (30) minutes west, at the distance of two hundred and three (203) feet and one-half (½) of a foot; thence from said post marked "No. 2, U. S. Survey, No. 40," north fifty-two (52) deg. west, seven hundred and twenty-seven (727) feet and one-half (½) of a foot to post marked "No. 3, U. S. Survey, No. 40," from which the highest point of Ruby Hill, No. 1, bears north sixty-one (61) deg. thirty-nine (39) minutes west, at the distance of three hundred and eighty-five (385) feet; thence north forty-nine (49) degrees thirty (30) minutes east, two hundred and four (204) feet to post marked "No. 4, U. S. Survey, No. 40;" thence south fifty-two (52) degrees east, six hundred and eighty-seven (687) feet and one-half (½) of a foot, to the place of beginning, containing three (3) acres and twenty-five hundredths (25-100) of an acre of land, more or less, as represented by the following plat:

[Here follows map, marked page 92.]

93 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said

acts of Congress, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot number forty (40), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of seven hundred and seven and one-half linear feet of the said Sentinel vein, lode, ledge, or deposit as hereinbefore described throughout its entire depth, although it may enter the land andjoining, and of all veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another: *To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land hereinbefore described as lot number forty (40), with seven hundred and seven and one-half linear feet of the Sentinel vein, lode, ledge, or deposit throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reser-

voirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

Given under my hand at the city of Washington, the third day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-sixth.

By the President:

[SEAL U. S. GENERAL LAND OFFICE.] U. S GRANT,
By J. PARRISH, *Secretary.*

C. B. BRYNTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 222 to 227.

Recorded at request of Wells, Fargo & Co., Oct. 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page, 512.

H. J. BIDLEMAN, *Recorder.*

94 "EXHIBIT J."

General Land Office No. 2,204 Mineral Certificate No. 288.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the revised statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Eureka Consolidated Mining Company upon the Lupita mine and mill-site, accompanied by the certificate of the register of the land office at Eureka, in the State of Nevada, whereby it appears that in pursuance of the said revised statutes of the United States, the Eureka Consolidated Mining Company, on the fourteenth day of February, A. D. 1877, enter and pay for said mining claim or premises, being Mineral Entry No. 288, in the series of said office, designated by the surveyor-general as lots Nos. 49 A and 49 B, embracing a portion of the unsurveyed public domain in the Eureka Mining District, in the County of Eureka and State of Nevada, in the district of lands subject to sale at Eureka, containing seven (7) acres and eighty-
95 hundredths (80-100) of an acre of land, more or less, and according to the returns on file in the General Land Office,

bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees, thirty (30) minutes east, to wit:

Beginning, for the description of that portion of the premises hereby conveyed, designated as lot No. 49 A, at a post marked "No. 1, U. S. Survey, No. 49, Lot A," from which the highest point of Ruby Hill, No. 1, bears south thirty-four (34) degrees, fifteen (15) minutes west, at the distance of three hundred and fifteen (315) feet, and the flag-staff in the town of Eureka bears north sixty-three (63) degrees thirty (30) minutes east at the distance of nine thousand nine hundred and sixty (9,960) feet; thence from said post No. 1 south fifty-two (52) degrees east four hundred and fifty-one and two-tenths ($451\frac{2}{10}$) feet to a post marked "No. 2, U. S. Survey, No. 49, Lot A," from which Lupita shaft upon the claim bears south fifty-seven (57) degrees fifteen (15) minutes east, at the distance of two hundred and ten (210] feet; thence from said post No. 2 north sixty-five (65) degrees fifteen (15) minutes east fifty (50) feet to a pine stump twelve (12) inches in diameter, marked "No. 3, U. S. Survey, No. 49 Lot A;" thence south sixty-seven (67) degrees east, three hundred and forty one feet to a post
96 marked "No. 4, U. S. Survey, No. 49, Lot A," the same being the northerly corner of the Elliptic claim; thence south forty-six (46) degrees fifteen (15) minutes west along the northwesterly boundary of said Elliptic claim, one hundred and eighty-four (184) feet to a post marked "No. 5, U. S. Survey, No. 49, Lot A," situate on the northeasterly boundary of survey No. 40, patented to the Eureka Consolidated Mining Company with their claim upon the Sentinel lode; thence north fifty-two (52) degrees west three hundred and thirty-six and one-half ($336\frac{1}{2}$) feet to a post marked "No. 6, U. S. Survey, No. 49, Lot A," the same being post No. 4 of said survey No. 40; thence south forty-nine (49) degrees thirty (30) minutes west one hundred and fifty-three (153) feet to post marked "No. 7, U. S. Survey, No. 49, Lot A," the same being post No. 2 of survey No. 47, patented to the Eureka Consolidated Mining Company with their claim upon the At Last lode; thence north fifty-two (52) degrees west four hundred and ten and two-tenths ($410\frac{2}{10}$) feet to a post marked "No. 8, U. S. Survey, No. 49, Lot A," the same being post No. 1 of said survey No. 47, and post No. 1 of survey No. 43, patented to the Eureka Consolidated Mining Company with their claim upon the Lookout lode; thence north thirty-eight (38) degrees east two hundred (200) feet to the place of beginning, containing three (3) acres of land, more or less,
97 and embracing eight hundred and five and twenty-hundredths ($805\frac{20}{100}$) linear feet of said Lupita mine.

Beginning, for the description of that portion of the premises hereby conveyed, designated as lot No. 49 B, at a post marked "No. 1, U. S. Survey, No. 49, Lot B," from which post No. 1 of survey No. 49 A, hereinbefore described, bears south fifty-one (51) degrees seventeen (17) minutes west, at the distance of ten thousand

eight hundred and thirty-three (10,833) feet, post No. 1 of survey No. 48 B, patented to the Eureka Consolidated Mining Company with their mill-site, bears south twelve (12) degrees thirty (30) minutes east, at the distance of five hundred and fifty (550) feet, the flag-staff in the town of Eureka bears south eleven (11) degrees ten (10) minutes east, at the distance of twenty-three hundred and seventy-seven (2377) feet, and the southeasterly corner of the Eureka Consolidated Mining Company's office bears south eight (8) degrees forty-nine (49) minutes west at the distance of five hundred and ninety-one (591) feet; thence from said post No. 1 north eighteen (18) degrees west, six hundred and ten (610) feet to a post marked "No. 2, U. S. Survey, No. 49, Lot B;" thence south seventy-seven (77) degrees thirty (30) minutes west three hundred (300) feet to a post marked "No. 3, U. S. Survey, No. 49, Lot B;" thence south eighteen (18) degrees east six hundred and ten (610) feet to a post marked "No. 4, U. S. Survey, No. 49, Lot B;"
98 thence south seventy-seven (77) degrees thirty (30) minutes west seventy-seven (77) feet to a post marked "No. 5, U. S. Survey, No. 49, Lot B;" thence south fifteen (15) degrees thirty (30) minutes east two hundred and forty-three (243) feet to a post marked "No. 6, U. S. Survey, No. 49, Lot B," the same being post No. 12 of said survey No. 48 B; thence north seventy-seven (77) degrees thirty (30) minutes east one hundred and eleven (111) feet to a post marked "No. 7, U. S. Survey, No. 49, Lot B;" thence north fifteen (15) degrees thirty (30) minutes west two hundred and forty-three (243) feet to a post marked "No. 8, U. S. Survey, No. 49, Lot B;" thence north seventy-seven (77) degrees thirty (30) minutes east two hundred and sixty-six feet to the place of beginning, containing four (4) acres and eighty-hundredths ($_{100}^{80}$) of an acre of land, more or less, which, together with the area embraced by said lot No. 49 A, hereinbefore described, aggregate seven (7) acres and eighty-hundredths ($_{100}^{80}$) of an acre of land, more or less, as represented by yellow shading in the following plat:

[Here follows map, marked page 99.]

100 Now know ye, that the United States of America, in consideration of the premises, and in conformity with the said revised statutes of the United States, have given and granted, and by these presents do give and grant unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lots Nos. 49 A and 49 B, embracing a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of eight hundred and five and twenty-hundredths (805 $_{100}^{20}$) linear feet of the said Lupita mine, vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining, and also

of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes,
101 ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so contained in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the surface of a mining claim owned or possessed by another: To have and hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations: First. That the grant hereby made is restricted to the land hereinbefore described as lots Nos. 49 A and 49 B, with eight hundred and five and twenty-hundredths ($805\frac{20}{100}$) linear feet of the Lupita mine, vein, lode, ledge, or deposit for the length aforesaid, throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depths as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other
102 vein, lode, ledge, or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purposes of extracting and removing the ore from such other vein, lode, ledge, or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy-seven, and of the independence of the United States the one hundred and first.

103 By the President:

[SEAL.] R. B. HAYES,
By D. D. CONE, *Secretary.*

S. W. CLARK,
*Recorder of the General Land Office.*

Recorded Vol. 26, pages 212 to 219 inclusive.

104 CHAMPION—"EXHIBIT K."

We, the undersigned, locate and claim four hundred feet on this ledge or deposit, beginning at the northern boundary of the Buckeye mine on Ruby Hill, and running northerly on the mine known as the "Champion," with all dips, spurs, angles, and variations.

We claim all privileges granted by the laws of Eureka Mining District.

This shall be known as the Champion Ledge and Co.

MAY 23, 1870. JOSEPH FARREN, 200.
H. H. ALLEN, 200.

Filed for record on the ground in Eureka District, May 23d, 1870.
D. S. McKAY, *Mining Recorder.*

105 "EXHIBIT L."

General Land Office No. 392. Mineral Certificate No. 111.

United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July 26th, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes;" the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of the survey of the claim of the Eureka Consolidated Mining Company upon the Lookout lode, bearing silver, accompanied by the certificate of the register of the land office at Austin, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress the Eureka Consolidated Mining Company did, on the twelfth day of September, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. 111, in the series of said office, designated by the surveyor-general as lot No. forty-three (43), forming a portion of the unsur-

veyed public domain in the Eureka Mining District, in the County of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing one (1) acre and seventy-five hundredths ($\frac{75}{100}$) of an acre of land, more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes east, to wit:

Beginning at a post marked "No. 1, U. S. Survey, No. 43," from which a prominent rocky point, No. 2, the summit of Silver Hill, bears south sixty-nine (69) degrees thirteen (13) minutes east, at the distance of seven thousand three hundred and twenty (7,320) feet, and the flag-staff in the town of Eureka bears north sixty-three (63) degrees one (1) minute east, at the distance of ten thousand one hundred and forty (10,140) feet; thence from said post south thirty-eight (38) degrees, west two hundred (200) feet, to post marked "No. 2, U. S. Survey, No. 43," the same being post No. 4 of survey No. 38, made for the claim of the Eureka Consolidated Mining Company upon the Champion lode, from which the highest point of Ruby Hill, No. 1, bears north fifty-one (51) degrees thirty (30) minutes east, at the distance of eighty-eight (88) feet; thence north thirty-four (34) degrees thirty (30) minutes, west four hundred (400) feet to post marked "No. 3, U. S. Survey, No. 43;" thence north thirty-eight (38) degrees, east two hundred (200) feet to post marked "No. 4, U. S. Survey, No. 43," from which the main shaft upon the Lookout lode bears south twenty-nine (29) degrees fifteen (15) minutes east, at the distance of two hundred (200) feet; thence from said post No. 4 south thirty-four (34) degrees thirty (30) minutes, east four hundred (400) feet, to the place of beginning, containing one (1) acre and seventy-five hundredths ($\frac{75}{100}$) of an acre of land, more or less, as represented by yellow shading in the following plat:

*Survey No. 43.*

Plat of the Eureka Consolidated Mining Company's claim upon the Lookout lode, Eureka Mining District, Lander County, Nevada, containing 1 75-100 acres. Scale of 150 feet to an inch. Variation, 16° 30′ east.

[Here follows map, marked page 106.]

107 Now know ye, that the United States of America, in consideration of the premises and in conformity with the said acts of Congress, have given and granted, and by these presents do give and grant unto the said Eureka Consolidated Mining Company, and to their successors and assigns, the said mining premises hereinbefore described as lot No. forty-three (43), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey, not herein expressly excepted from these presents, and of four hundred (400) linear feet of the said Lookout vein, lode, ledge,

or deposit, as hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and of all veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey, at the surface, extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the surface of a mining claim owned or possessed by another, to have and to hold said mining premises, together with all rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Eureka Consolidated Mining Company, and to their successors and assigns, forever, subject, nevertheless, to the following conditions and stipulations: *First*, that the grant hereby made is restricted to the land hereinbefore described as lot No. forty-three (43), with four hundred (400) linear feet of the Lookout vein, lode, ledge, or deposit throughout its entire depth, as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth, as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two. *Second*. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same, in its downward course, be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit. *Third*. That the premises hereby conveyed shall be held subjected to any vested and accrued water rights, for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts. *Fourth*. That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the independence of the United States the ninety-seventh.

By the President:

[SEAL.] U. S. GRANT,
By Z. B. STURGUS, *Assistant Secretary.*

C. B. HOUGHTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 286 to 292.—Examined.

(Endorsed:) Recorded at request of Wells, Fargo & Co., October 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page 497.

H. J. BIDLEMAN, *Recorder.*

108 "EXHIBIT M."—UTAH.

I have this day located the Utah claim consisting of eight hundred and seventy-four (874) feet in length, by one hundred and ninety-eight (198) feet in width, situated on north side of Ruby Hill, running from the point where the ore was discovered, immediately under this monument and notice eight hundred and thirty-five (835) feet easterly, and thirty-nine (39) feet westerly. The boundaries on this claim are plainly marked by stakes and stone monuments, and are more particularly described as follows:

Commencing at a post and stone monument from whence the Lawton shaft of the E. C. M. Co., bear south 55° east eleven hundred and seventy-seven feet, and running thence north 33° east one hundred and ninety-eight feet; thence, south 62½° east 874 feet; thence, south 33° west 198 feet; thence, north 62½° west 874 feet, to place of beginning. I claim all the privileges granted by the mining laws of this district, and the act of Congress, approved May 10th, 1872.

Ruby Hill, Eureka District, January 7th, 1877.

THOMAS WREN.

Recorded January 16th, 1877.

M. G. CAVANAUGH,
*Mining Recorder.*
Per G. J. SCANLAND, *Deputy.*

"EXHIBIT N."—ARCTIC.

I hereby claim six hundred feet on this ledge, lode, or deposit, discovered in the works of the Richmond Consolidated Mining Company (limited), of London, and known as the Richmond ledge, lode, or deposit. My claim commences at a point upon said ledge, lode, or deposit, perpendicularly underneath a stake and stone

monument, whence a small pine tree with three notches in blaze, bears S. 63½° E. 42 feet distant, and running thence, 1st, S. 62½° E. 600 feet to stake, thence, 2d, S. 38° W. 203 feet and four inches to a stake, thence, 3d, N. 62½° W. 600 feet to a stake, thence, N. 38° E. 203 feet and four inches to the place of beginning, together with all the dips, spurs, and angles of said ledge, lode, or deposit. Courses expressed from true meridian, Mag. Var. 16½° E.

October 2d, 1876.

To be known as the Arctic Ledge.

R. RICKARD.

Filed for record October 4th, 1876.

M. G. CAVANAUGH,
*Mining Recorder.*

109 "EXHIBIT O."—RICHMOND.

We, the undersigned, have this the 20th day of September, 1869, located and claim seven locations of one hundred feet square.

We also claim seven locations of two hundred feet each on this the Richmond ledge. This ground more particular described as located and situated adjoining the Champion claim on the south and running north from said Champion, and adjoining the claim known as the Tip-top ledge, and located by Davis and Makinson.

We claim all dips, spurs, and angles, together—all privileges granted by the mining laws of this district.

Eureka Dist., Sept. 20th, 1869.

This ledge to be known as the Richmond.

| | |
|---|---|
| W. C. McCOY, | 200 feet. |
| THOMAS SHORT, | 200 feet. |
| DANIEL DALTON, | 200 feet. |
| TIM. HEALY, | 200 feet. |
| PATRICK DUGAN, | 200 feet. |
| THOS. EVANS, | 200 feet. |
| WM. ADAMS, | 200 feet. |

Filed for record Sept. 20, 1869.

A. MONROE, *Rec.*
Pr. WM. ADAMS, *Dept.*

Situated on western slope of Ruby Hill.

110 TIP-TOP.—"EXHIBIT P."

We, the undersigned, claim six hundred feet on this ledge running on the course of the lead from this monument and notice with all dips, spurs, and angles, and one hundred feet on each side of the ledge for mining purposes.

Eureka Dist., Sept. 20th, 1869.

This ledge to be known as the Tip-Top.

| | |
|---|---|
| THOMAS MACKENSON, | 300 feet. |
| LLEWELLING DAVIS, | 300 " |

Filed for record on the ground, Sept. 20, '69.

A. MONROE, *Rec.*
Pr. WM. ADAMS, *Dept.*

Situated on the western slope of Ruby Hill.

LOOKOUT CLAIM.—"EXHIBIT Q."

We, the undersigned, have taken up and located a square location in accordance with the amended mining laws of this district, and do claim 400 feet northerly and southerly. By 200 feet easterly and westerly, being 100 feet each side of the hill monuments for the center, and is situated on the north end of Ruby Hill, Eureka District, Lander Co., Nev., May the 29th, 1869.

111

| | |
|---|---|
| ALEXANDER RAY, | 200 feet square. |
| HARRY DALY, | 100 feet square. |
| JOHN BENNETT, | 100 feet square. |
| JAMES PROUT, | 100 feet square. |
| JAMES LASHEY, | 100 feet square. |
| JAMES TYLER, | 100 feet square. |
| DANIEL MYERS, | 100 feet square. |

Filed for record on the ground, May 29th, 1869.

A. MONROE, *Recorder.*

112 "EXHIBIT R."

General Land Office No. 885. Mineral Certificate No. 163.

United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-six, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes;" the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claims of the Richmond Mining Company of Nevada upon the Richmond lode, accompanied by the certificate of the register of the land office at Eureka, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress the Richmond Mining Company of Nevada did, on the 30th day of August, A. D. 1873, enter and pay for said mining claim or premises, being Mineral Entry No. 163, in the series of said office, designated by the surveyor-general as lot No. 64, embracing a portion of the unsurveyed public domain, in the Eureka Mining District, in the County of Eureka and State of Nevada, in the district of lands subject to sale at Eureka, embracing

three (3) acres and thirty-nine hundredths ($\frac{39}{100}$) of an acre of land, more or less, and, according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variations at sixteen (16) degrees thirty (30) minutes east, to wit: Beginning at post No. 1, near the summit of Ruby Hill, the same being post No. 4 of survey No. 38, made for the claim of the Eureka Consolidated Mining Company upon Champion lode, and post No. 2 of survey No. 43, made for the Eureka Consolidated Mining Company upon the Lookout lode, from which the northwest corner of the Richmond hoisting works bears north sixty-two (62) degrees forty-five (45) minutes west, at the distance of five hundred and eleven (511) feet; thence from said post north thirty-four (34) degrees fifteen (15) minutes, west four hundred (400) feet to northwesterly corner of said survey No. 43 five hundred and one and one-half ($501\frac{1}{2}$) feet to post in stone monument marked "Richmond N. E. cor.;" thence south thirty-eight (38) degrees west three hundred (300) feet to iron pin in stone monument; thence south thirty-four (34) degrees fifteen (15) minutes east five hundred and one and one-half ($501\frac{1}{2}$) feet to stone monument standing at base of Limestone bluff; thence north thirty-eight (38) degrees east three hundred (300) feet to the place of beginning, containing three (3) acres and thirty-nine hundredths ($\frac{39}{100}$) of an acre of land, more or less, and embracing five hundred and one and one-half ($501\frac{1}{2}$) linear feet of the said Richmond lode, as represented by yellow shading in the following plat:

[Here follows map, marked page 113.]

114 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, have given and granted, and by these presents do give and grant unto the said Richmond Mining Company of Nevada, and to their successors and assigns, the said mining premises hereinbefore described as lot No. 64, embracing a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of five hundred and one and one-half ($501\frac{1}{2}$) lineal feet of the said Richmond vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining; and also of all other veins, lodes, ledges, or deposits throughout their entire depths, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface, extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward

through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the surface of a mining claim owned or possessed by another: To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Richmond Mining Company of Nevada, and to their successors and assigns, forever, subject, nevertheless, to the following conditions and stipulations: *First.* That the grant hereby made is restricted to the land hereinbefore described as lot No. 64, with five hundred and one and one-half (501½) lineal feet of the Richmond vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey, but subject to the right of other parties to follow any vein or lode, with its dips, angles, and variations, legally held under a location made prior to May 10, 1872. *Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same, in its downward course, be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit. *Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights, for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts. *Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given under my hand at the city of Washington, the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-four, and of the independence of the United States the ninety-eighth.

By the President:

[SEAL.]

U. S. GRANT,

By S. D. WILLIAMSON, *Secretary.*

L. K. LIPPINETT,

*Recorder of the General Land Office.*

Recorded Vol. 10, pages 217 to 222.—Examined.

(Endorsed:) United States to Richmond Mining Co. Mineral Certificate No. 163, Richmond lode. Dated April 30, 1874.

Recorded at request of J. J. Corrigan, September 12th, A. D. 1874, at 10 minutes past 11 o'clock A. M., in Liber Three of Deeds, pages 26 to 29, Eureka County, Nevada Records.

T. J. TENNANT, *Recorder.*

115 "EXHIBIT T."

General Land Office No. 886. Mineral Certificate 164.

The United States of America. To all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-six, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May 10th, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Richmond Mining Company of Nevada upon the Tip-Top lode, accompanied by the certificate of the register of the land office at Eureka, in the State of Nevada, whereby it appears that, in pursuance of said act of Congress, the Richmond Mining Company of Nevada did, on the 30th day of August, A. D. 1873, enter and pay for said mining claim or premises, being Mineral Entry No. 164, in the series of said office, designated by the surveyor-general as lot No. 65, embracing a portion of the unsurveyed public domain in the Eureka Mining District, in the county of Eureka and State of Nevada, in the dstrict of land subject to sale at Eureka, embracing three (3) acres and thirty-nine hundredths (39-100) of an acre of land, more or less, and, according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes east, to wit: Beginning at a post marked "Tip-Top, S. E. cor.," and "Richmond, N. E. cor.," the same being the northeasterly corner of survey No. 64, made for the claim of the Richmond Mining Company of Nevada, upon the Richmond lode, from which the Tip-Top shaft bears south seventy-one (71) degrees west, at the distance of one hundred and forty (140) feet, and the flag-staff in Main street, in town of Eureka, bears north sixty-five (65) degrees fifteen (15) minutes east, at the distance of ten thousand three hundred and eighty-five (10,385) feet; thence from said post north thirty-four (34) degrees fifteen (15) minutes west, six hundred (600) feet to

post marked "Tip-Top, N. E. cor.;" thence south thirty-eight (38) degrees west, three hundred feet to post marked "Tip-Top, N. W. cor.," thirty-four (34) degrees fifteen (15) minutes east, six hundred (600) feet to an iron pin and stone monument at northwesterly corner of said survey No. 64; thence north thirty-eight (38) degrees east, three hundred (300) feet to the place of beginning, containing three (3) acres and ninety-three hundredths ($\frac{93}{100}$) of an acre of land, more or less, and embracing six hundred (600) linear feet of the said Tip-Top lode, as represented by yellow shading in the following plat.

116 Plat of the claim of the Richmond Mining Company of Nevada, upon the Tip-Top lode, Eureka Mining District, Eureka County, Nevada, containing 3 39-100 acres. Scale of 200 feet to an inch. Mag. var. 16° 30′ east.

[Here follows map, marked page 116.]

117 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, have given and granted, and by these presents do give and grant unto said Richmond Mining Company of Nevada, and to their successors and assigns, the said mining premises hereinbefore described as lot No. 65, embracing a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of six hundred (600) linear feet of the said Tip-Top vein, lode, ledge, or deposit for the length hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and also of all other veins lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface, extended downward vertically, although such veins, lodes, ledges, or deposits, in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: *Provided*, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes, drawn downward through the end lines of said survey at the surface, so continued in their own directions that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: *And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the surface of a mining claim owned or possessed by another; to have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Richmond Mining Company of Nevada, and to their successors and assigns, forever, subject, nevertheless, to the following conditions and stipulations: *First.* That the grant hereby made is restricted to

the land hereinbefore described as lot No. 65, with six hundred (600) linear feet of Tip-Top vein, lode, ledge, or deposit, for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, but subject to the right of other parties to follow any vein or lode, with its dips, angles, and variations, legally held under a location made prior to May 10, 1872. *Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same, in its downward course, be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit. *Third.* That the premises hereby conveyed shall be held subject to any vested and accrued water rights, for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local laws, customs, and decisions of courts. *Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claims or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-four, and of the independence of the United States the ninety-eighth.

[SEAL.] By the President:

U. S. GRANT,

By L. D. WILLIAMSON, *Secretary.*

L. K. LIPPINET,

*Recorder of the General Land Office.*

Recorded Vol. 10, pages 223 to 228.—Examined.

(Endorsed:) United States to Richmond Mining Co. Mineral Certificate No. 164. Tip-Top Lode. Dated April 30, 1874.

Recorded at request of J. J. Corrigan, September 12th, A. D. 1874, at 30 minutes past 11 o'clock A. M., in Liber Three of Deeds, pages 21 to 25, Eureka County, Nevada Records.

T. J. TENNANT, *Recorder.*

[Here follows map, marked page 118.]

[Here follows map, marked page 119.]

120 "EXHIBIT W."

EUREKA CONS'D MINING CO.
TO
RICHMOND MINING COMPANY.

This indenture, made the 26th day of April, in the year of our Lord one thousand eight hundred and seventy-one, between the Eureka Consolidated Mining Company, party of the first part, and the Richmond Mining Company, the party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of one dollar, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim unto the said party of the second part and to to its heirs and assigns, all that certain lot, piece, or parcel of land situate, lying and being in the State of Nevada, County of Lander, Eureka Mining District, and bounded and particularly described as follows, to wit:

Commencing at a point whence the S. W. corner of the Champion bears S. 52 degrees E. 202.2 ft. (two hundred and two and two 2-10 feet), and thence running N. 52 deg. W. 147.8 ft. (one forty-seven and 8-10 feet); thence N. 38 deg. E. 153 ft. (one hundred and fifty-three feet); thence S. 6 deg. E. 212.8 ft. (two hundred and twelve and 8-10 feet) to the place of beginning, containing 26-100 (twenty-six one hundredths) acres.

The above-described triangle is ground claimed by the Richmond Mining Company as a part of their original location, and was included within the survey made for the Eureka Consolidated Mining Company. But it is expressly understood and agreed that this deed does not convey or quitclaim or release any ores, precious metals, veins, lodes, or deposits, dips, spurs, or angles not embraced within the above-mentioned boundaries, and that the party of the second part agrees and covenants for itself, its successors, and assigns, to make no claim hereafter to any ground or ore or metals therein embraced within the Nuget, Champion, Lookout, At Last, Margaret, and other mining claims and locations now owned and possessed by the party of the first part, except as to that contained within the limits of the above-described triangular piece of ground; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever as well in law as in equity of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

In witness whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

EUREKA CONSOLIDATED MINING CO.,
By its President, G. T. LAWTON. [SEAL.]

Signed, sealed, and delivered in presence of E. V. Joice.

[U. S. and State Rev. Stps. 50c. ea. cld.]

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } *ss.*

On this twenty-sixth day of April, 1871, before me, E. V. Joice, a commissioner of deeds for the State of Nevada, duly commissioned and sworn, residing in the city and county aforesaid, personally appeared the within named G. T. Lawton, president of the Eureka Consolidated Mining Company, a corporation organized under and by virtue of the laws of the State of California, whose name is subscribed to the annexed instrument as such president, personally known to me to be the individual described in and who executed said instrument as such president of said corporation, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and as the act and deed of said corporation, and that the seal affixed to said instrument is its true and lawful corporate seal, and that he subscribed the said instrument, and said corporate seal was affixed by virtue of authority duly conferred by said corporation.

Witness my hand and official seal the day and year in this certificate first written.

[SEAL.] E. V. JOICE,
*Commissioner of Deeds for the State of Nevada.*

Recorded at request of Wm. Adams, May, 4, A. D. 1871, at 8 min. past 6 P. M.

H. J. BIDDLEMAN, *Recorder.*

Liber 39, page 257, Lander County Records, Book 2, page 615 of transcribed records of Lander to Eureka County.

121 "EXHIBIT X."

EUREKA CONSOLIDATED MINING COMPANY
AND
RICHMOND MINING COMPANY OF NEVADA.

This agreement, made the sixteenth day of June, A. D. one thousand eight hundred and seventy-three, between the Eureka Consolidated Mining Company, a corporation organized under the laws of the State of California, of the first part, and the Richmond Mining Company of Nevada, a corporation organized under the laws of the State of Nevada, of the second part.

Whereas, differences have arisen and now exist between the parties hereto, in respect to the ownership and right of possession of certain mining ground known as the Lookout ground or claim, situate in the Eureka Mining District, in the County of Eureka, State of Nevada, and of the ores, metals, and deposits found in and under the said ground; and whereas, an action is, or certain actions are now pending in the courts of the State of Nevada, where the party hereto of the first part is the plaintiff; and the party hereto of the second part and others, are the defendants; for the recovery, among other things, of the possession of the ground and of the ores therein contained, or which have been taken therefrom by the defendants, in which action a bond has, or bonds have been entered into or given by and on behalf of the plaintiff, upon an application by the said plaintiff for an injunction, or restraining order against the said defendants or some of them, and also, upon a claim and delivery of personal property by said plaintiff; and whereas, the said parties have agreed to settle all the differences between them and put an end to the litigation now pending as aforesaid.

Now, therefore, this agreement witnesseth, that the said party of the first part, for and in consideration of the sum of eighty-five thousand dollars, gold coin of the United States, to be paid by said party of the second part, at the times and in the manner hereinafter set forth, and the further covenants, agreements, and conditions hereinafter contained, to be kept, performed, and observed by, and on the part of the said party of the second part, have agreed, and do hereby agree to convey to the said party of the second part, its successors and assigns, with warranty against their own acts, all that certain lot, piece, or parcel of land or mining ground, situate in the Eureka Mining District, County of Eureka, State of Nevada, and known as the Lookout ground or claim; and also, all the mining ground and claim lying on the northwesterly side of a certain line, commencing at the northeasterly corner of the Margaret mining ground or claim, which corner is marked × on the map or plan hereto annexed, and made part of this agreement; running thence in a southwesterly direction along the edge of said Margaret ground, the At Last ground, and the Champion ground, to a point marked W on said map; thence southerly along the edge of said Champion ground, to the northeasterly corner of the Nugget ground; thence in a southwesterly direction along the edge of said Nugget ground, to the northwesterly corner thereof, at the point marked R on said map or plan, together with all the ores, precious metals, including those now lying on the dump at the "Lookout shaft," and all veins, lodes, ledges, deposits, dips, spurs, or angles on, in, or under the same contained; and to dismiss all the said actions now pending in the courts of the State of Nevada, between the parties hereto, in respect to the said land or mining claim, and the ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, and angles on, in, or under the same, or which may have been taken from the said

land or mining ground, and to release the said party of the second part, and all persons acting for or in its behalf, from all claims and demands in respect to the said land or mining ground, and to the ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, now or heretofore found in or under the same. And the said party of the first part further agrees not to protest against or put any obstacle in the way of the party of the second part in their application for a United States patent to the Richmond or other lodes or veins, provided each application do not conflict or cross the aforesaid line agreed upon; and the said party of the second part, in consideration of the premises, hath agreed and doth hereby agree to pay to the said party of the first part, its successors or assigns, the said sum of eighty-five thousand dollars, in gold coin of the United States, in manner following, that is to say:

On the execution hereof, the sum of twenty-five thousand dollars; on the sixteenth day of July, one thousand eight hundred and seventy-three, the sum of twenty-five thousand dollars; on the sixteenth day of August next following, the sum of twenty-five thousand dollars; and on the sixteenth day of September next following, the sum of ten thousand dollars, for all of which payments, except the first, the said party of the second part is to give its promissory notes.

And the said party of the second part, for the consideration aforesaid, hath further agreed, and doth hereby further agree, to release and discharge, and doth hereby release and discharge the said party of the first part, its successors and assigns and its sureties, from all claims and demands, whether for damages, compensation, or indemnity, or otherwise, or under or by reason of any bond or undertaking, made, given, or entered into by or on behalf of the said party of the first part, in any action or suit now or heretofore pending or subsisting in respect to the said land or mining ground, or the ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, now or heretofore found in or under the same, and from any act, thing, or proceeding done or taken by or on behalf of the said party of the first part, in any such actions or suits. And the said party of the second part, for the consideration aforesaid, hath further agreed and doth hereby further agree, to convey unto the said party of the first part, with warranty against its own acts, all its right, title, or interest in and to any and all the land or mining ground situate in the Eureka Mining District aforesaid, on the southeasterly side of the line hereintofore mentioned, and laid down on the said map hereto annexed, and in and to all ores, precious metals, veins, lodes, ledges, deposits, dips, spurs, or angles, on, in, or under the said land or mining ground, or any part thereof. It being the object and intention of the said parties hereto to confine the workings of the said party of the second part to the northwesterly side of the said line continued downward to the center of the

earth, which line is hereby agreed upon as the permanent boundary line between the claims of the said parties.

And it is hereby mutually agreed that the notes to be given party, and the deeds and conveyances heretofore provided for, shall be upon the execution of these presents, deposited with D. O. Mills and W. C. Ralston, in the Bank of California, of San Francisco, there to remain until all the said notes shall have been paid and taken up, upon the happening of which event the said deeds and conveyances are to be delivered by the said Mills and Ralston, or either of them, to the respective grantees therein named, their successors or assigns. It is the understanding of the parties hereto that the actions hereintofore recited, are to be forthwith dismissed, and that the party of the second part is to remain in possession of the Lookout ground aforesaid, and at its option work the same from this date.

122 In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents and secretaries, and their respective corporate seals to be hereunto affixed.

EUREKA CONSOLIDATED MINING COMPANY,
{ EUREKA CON. MINING CO.—INCORPORATED. } By its President, G. T. LAWTON. [SEAL.]
RICHMOND MINING COMPANY OF NEVADA,
{ RICHMOND—INCORPORATED } By its President, J. J. CORRIGAN. [SEAL.]
W. W. TRAYLOR, *Secretary*. [SEAL.]

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO. } *ss.*

I, F. J. Thibault, a commissioner of —— for the State of Nevada, duly commissioned and qualified, under and by virtue of the laws thereof, residing in the city and county of San Francisco, State of California, do certify that on the seventeenth day of June, A. D. one thousand eight hundred and seventy-three, before me personally appeared G. T. Lawton, known to me to be the president, and W. W. Traylor, known to me to be the secretary of the Eureka Consolidated Mining Company, a corporation duly organized under the laws of the State of California, who are personally known to me to be the individuals described in, who executed, and whose names are subscribed to the foregoing instrument. The said Eureka Consolidated Mining Company being named in said instrument, and known to me to be the corporation described therein, as a party thereto. And they, the said G. T. Lawton and W. W. Traylor, duly acknowledged to me that they executed the same as such president and secretary, as and for the act and deed of said Eureka Consolidated Mining Company, and that the said corporation executed the same freely and voluntarily, for the uses and purposes therein mentioned, and that the seal which is hereto affixed is

the corporate seal of said company, and was thereto affixed by authority thereof. And on the same day before me personally appeared J. J. Corrigan, known to me to be the president of the Richmond Mining Company of Nevada, a corporation duly organized under the laws of the State of Nevada, personally known to me to be the individual described in, who executed, and whose name is subscribed to the foregoing instrument, said Richmond Mining Company of Nevada, being named in said instrument and known to me to be the corporation described therein as a party thereto. And he, the said J. J. Corrigan, duly acknowledged to me that he executed the same as such president, as and for the act and deed of said Richmond Mining Company of Nevada, and that said corporation executed the same freely and voluntarily, for the uses and purposes therein mentioned. And that the seal which is thereto affixed is the corporate seal of said corporation, and was thereto affixed by authority thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal as such commissioner, at my office, in the city and county of San Francisco, State of California, this seventeenth day of June, A. D. 1873.

F. J. THIBAULT,
*Commissioner for Nevada in California.*

Endorsed: Agreement. Dated June 16th, 1873. Filed and recorded at request of Wells, Fargo & Co., June 20, 1873, at 35 minutes past 10 A. M. A. J. Campbell, recorder, by J. C. Maupin, deputy. Book A, Miscellaneous Records, pp. 38–39–40–41–42, Records of Eureka County.

[Here follows map, marked page 123.]

124 "EXHIBIT Y."

THE EUREKA CONSOLIDATED MINING COMPANY, (CORPORATION,)
TO
THE RICHMOND MINING COMPANY OF NEVADA, (CORPORATION.)

This indenture, made the sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, between the Eureka Consolidated Mining Company, a corporation organized under the laws of the State of California, party of the first part, and the Richmond Mining Co. of Nevada, a corporation organized under the laws of the State of Nevada, the party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of five dollars, gold coin of the United States of America, to it in hand paid by the said party of the second party, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents doth grant, bargain, sell, remise, release, and forever quitclaim unto the

said party of the second part, and to its successors and assigns, all the mining ground situate and being in the Eureka Mining District, Eureka County, State of Nevada, and lying on the northwesterly side of the following line, to wit:

Commencing at the northeasterly corner of the Margaret mining ground or claim, which corner is marked "X" in the map or plan annexed to a certain agreement bearing even date with this indenture, made and entered into by and between the said Eureka Consolidated Mining Company, of the first part, and the said Richmond Mining Company of Nevada, of the second part; running thence in a southwesterly direction along the edge of the said "Margaret" ground, the "At Last" ground, and the Champion ground, to a point marked "W" on the said map; thence southerly along the edge of the said Champion ground to the northeasterly corner of the Nugget ground; thence in a southwesterly direction along the edge of the Nugget ground, to the northwesterly corner of the said Nugget ground at the point marked "R" on said map, including the mining claim known as the "Lookout," more particularly described in the patent, No. 392, from the United States to the said party of the first part (and which patent is herewith transferred to the party of the second part), as follows, to wit:

Beginning at a point marked No. 1, "U. S. Survey, No. 43," from which a prominent rocky point No. 2, the summit of Silver Hill, bears south sixty-nine degrees 13 minutes east, at a distance of 7,000 three hundred and twenty feet, and the flag-staff in the town of Eureka bears north sixty-three degrees one (1) minute east, at the distance of ten thousand one hundred and forty (10,140) feet; thence from the said post south 38 degrees west, 200 feet to a post m'kd "No. 2, U. S. Survey, No. 43," the same being post No. 4 of survey No 38, made for the claim of the Eureka Consolidated Mining Company upon the Champion lode, from which the highest point on Ruby Hill, No. 1, bears north fifty-one degrees 30 minutes east, at the distance of 88 feet; thence north thirty-four (34) degrees thirty (30) minutes west, four hundred (400) feet to post m'kd "No. 3, U. S. Survey, No. 43;" thence N. 38 degrees east, 200 feet to the post m'kd "No. 4, U. S. Survey, 43," from which the main shaft upon the "Lookout" lode bears south 29 degrees 15 minutes east, at the distance of 200 feet; thence from said post No. 4 south 34 degrees 30 minutes east, four hundred feet to the place of beginning, containing 1 acre and seventy-five one-hundredths (75-100) of an acre of land, more or less.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest,

property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident and appendant unto the said party of the second part, its successors and assigns, forever.

In witness whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

EUREKA CONSOLIDATED MINING CO.,

{SEAL OF EUREKA CON. MINING CO.} By its President, G. T. LAWTON. [SEAL.]

W. W. TRAYLOR, *Secretary.* [SEAL.]

Signed, sealed, and delivered in presence of F. J. Thibault.

STATE OF CALIFORNIA, } *ss.*
CITY AND COUNTY OF SAN FRANCISCO. }

I, F. J. Thibault, a commissioner of the State of Nevada, duly commissioned and qualified under and by virtue of the laws thereof, residing in the city and county of San Francisco and State of California, do certify that on the seventeenth day of June, A. D. one thousand eight hundred and seventy-three, before me personally appeared G. T. Lawton, known to me to be the President, and W. W. Traylor, known to me to be the Secretary of the Eureka Consolidated Mining Company, a corporation duly organized under the laws of the State of California, personally known to me to be the individuals described in and who executed and whose names are subscribed to the foregoing instrument, the Eureka Consolidated Mining Company being named in the said instrument, and known to me to be the corporation described therein as a party thereto; and they, the said G. T. Lawton and W. W. Traylor, duly acknowledged to me that they executed the same as such president and secretary, and as for the act and deed of the said Eureka Consolidated Mining Company, and that the said corporation executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the seal which is thereto affixed is the corporate seal of said corporation, and was thereto affixed by authority thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal as such commissioner, at my office in the city and county of San Francisco and State of California, this seventeenth day of June, A. D. one thousand eight hundred and seventy-three.

[SEAL.] F. J. THIBAULT,
*Commissioner for Nevada in California.*

Filed for record, and recorded at the request of M. D. Howell, Aug. 19th, A. D. 1873, at 9 o'clock A. M.

A. S. CAMPBELL, *Recorder.*

Book 2, pages 146, 147, 148 of Deeds, Eureka County Records.

125 "EXHIBIT Z."

RICHMOND MINING COMPANY OF NEVADA
TO
EUREKA CONSOLIDATED MINING COMPANY.

This indenture, made the sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, between the Richmond Mining Company of Nevada, a corporation organized under the laws of the State of Nevada, the party of the first part, and the Eureka Consolidated Mining Company, a corporation organized under the laws of the State of Callfornia, the party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum or five dollars, gold coin of the United States of America, to it in hand paid by the said party of the second party, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents doth grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to its successors and assigns, all the mining ground situate and being in the Eureka Mining District, Eureka County, State of Nevada, and lying on the southeasterly side of the following line, to wit:

Commencing at the northeasterly corner of the Margaret mining ground or claim, which corner is marked "X" on the map or plan annexed to a certain agreement bearing even date with this indenture, made and entered into by and between the said Eureka Consolidated Mining Company, of the first part, and the said Richmond Mining Company of Nevada, of the second part; running thence in a southwesterly direction along the edge of the said "Margaret ground," the "At Last ground," and the "Champion ground," to a point marked "W" on said map; thence southerly along the edge of the said "Champion ground" to the northeasterly corner of the "Nugget ground;" thence in a southwesterly direction along the edge of the said "Nugget ground," to the northwesterly corner of the said "Nugget ground," at the point marked "R" on said map. Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

In witness whereof, the said party of the first has hereunto set its hand and seal the day and year first above written.

RICHMOND MINING COMPANY OF NEVADA,
By its President, J. J. CORRIGAN. [SEAL.]

Signed, sealed, and delivered in the presence of F. J. Thibault.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA.
CITY AND COUNTY OF SAN FRANCISCO. } *ss.*

I, F. J. Thibault, a commissioner for the State of Nevada, duly commissioned and qualified under and by virtue of the laws thereof, residing in the city and county of San Francisco, State of California, do certify that on the seventeenth day of June, A. D. one thousand eight hundred and seventy-three, before me personally appeared J. J. Corrigan, known to me to be the president of the Richmond Mining Company of Nevada, a corporation duly organized under the laws of the State of Nevada, who is personally known to me to be the individual described in, whose name is subscribed to and who executed the within instrument, the said Richmond Mining Company of Nevada being named in said instrument, and known to me to be the corporation described therein as a party thereto; and he, the said J. J. Corrigan, duly acknowledged to me that he executed the same as such president as and for the act and deed of said Richmond Mining Company of Nevada, and that said corporation executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the seal that is thereto affixed is the corporate seal of said corporation, and was thereto affixed by authority thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal as such commissioner, at my office in the city and county of San Francisco, in the State of California, this seventeenth (17th) day of June, A. D. 1873.

[COMMISSIONER'S SEAL.] F. J. THIBAULT,
*Commissioner for Nevada in California.*

Recorded at request of P. L. Buckminster, Aug. 19, A. D. 1873, at 15 min. past 9 o'clock A. M.

A. J. CAMPBELL, *Recorder.*

Book 1 of deeds, pages 105, 106, 107, Records of Eureka County, Nevada.

126 (Endorsed:) In U. S. Circuit Court Dist. of Nevada. Eureka Con. M. Co. vs. Richmond M. Co. Findings. Filed Sept. 17, 1877. T. J. Edwards, clerk.

127 *Judgment.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Nevada.

| | |
|---|---|
| THE EUREKA CONSOLIDATED MINING COMPANY, Plaintiff, *vs.* THE RICHMOND MINING COMPANY OF NEVADA, et als., Defendants. | At Law. March Term, A. D. 1877. |

The said plaintiff and the said defendants having duly filed with the clerk of this court a stipulation in writing waiving a jury, now, on the twenty-third day of July, A. D. 1877, came before the justices of this court the said plaintiff and the said defendants, by their respective attorneys, and thereupon in open court it was stipulated and agreed by the said parties to this action, and all of them, that this action should be dismissed without costs or prejudice to any party, as to the defendants Thos. Wren and Joseph Potts, and that the claim of the plaintiff for damages, use, and occupation, and taking and removing ore, be withdrawn without prejudice to any other or new action therefor, and thereupon it was ordered

128 and adjudged by the court that said claim so withdrawn be stricken from the complaint herein, without prejudice to any other action therefor, to wit: that the following portions of said complaint be stricken therefrom: from the word "to," on line 32, page 2, to the word "states," on line 34, page 2, inclusive; and from the word "upwards," on line 38, page 2, to the word "thereof," on line 7, page 3, inclusive; and from the word "and," where it first occurs on line 10, page 3, to the word "states," on line 11, page 3, inclusive.

And thereupon the evidence on both sides was introduced and the case was argued by counsel, and thereupon the court made and filed herein its findings of fact, and found as a conclusion of law that at the time of the commencement of this action the plaintiff was the owner and entitled to the possession of the premises described in its said complaint, and that prior to the commencement of this action the defendant ousted the plaintiff therefrom, and ever since has withheld the same from the plaintiff.

Therefore it is considered that the plaintiff, The Eureka Consolidated Mining Company, do recover against the defendant, The Richmond Mining Company of Nevada, the mining ground

129 and premises described in said complaint, and the possession thereof, and also that plaintiff do have and recover of and from said defendants its costs in this action, taxed at two hundred and seventy-eight and $\frac{70}{100}$ dollars, and that the clerk of this court do issue proper writs of restitution and execution for the enforcement of this judgment.

SEPT. 17, 1877.

(Endorsed:) U. S. Circuit Court, Dist. of Nevada. Eureka Con. Mining Company vs. Richmond Mining Co. of Nevada. Judgment. Filed Sept. 17, 1877. T. J. Edwards, clerk.

130 *Bill of Exceptions.*

In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

THE EUREKA CONSOLIDATED MINING COMPANY, Plaintiff,
*vs.*
THE RICHMOND MINING COMPANY OF NEVADA, Defendant.

Be it remembered that on the trial of this cause the plaintiff offered and read in evidence certain patents issued to it by the United States government, of certain mining property (except the patent for the Lookout lode), copies of which patents are annexed to and made part of the special findings of fact in this case, made and filed by the court; and the defendant corporation offered and read in evidence the patents issued to it by the United States government for certain mining property, and also said patent for the Lookout lode, copies of which patents are annexed to and made part
131 of said special findings; also a conveyance by plaintiff to said defendants of said Lookout claim described in said patent, defendant also offered evidence tending to prove the locations of the said mining grounds referred to in said special findings as therein stated; and that the locations upon which said defendant's patents issued were earlier than those upon which the plaintiff's said patents were issued; and that plaintiff offered no evidence showing or tending to show where the location upon which its patents issued were made other than what is contained in the patents themselves; and defendant corporation likewise offered evidence, such evidence being the patents and maps, tending to prove that the end lines of neither of the claims of plaintiff which are described in said patents annexed to said special findings and called Lupita (including the Margaret), the Nuget, and At Last claims, were or are parallel to each other; and further evidence was offered upon the other matters and facts referred to in the said special findings—and
132 thereupon and immediately upon the conclusion of the evidence, and before the decision of the court thereon, the defendant corporation presented to the court a series of propositions of law being the same hereinbelow contained and numbered respectively, one to thirteen both inclusive, and requested the court to rule separately upon each and all of said propositions and the court thereupon took the said case under advisement, including also said propositions of law so presented by the defendant corporation. Afterwards and at a subsequent day the court being fully advised made

and filed its special findings of facts and conclusions of law as the same now appear of record herein, and at the same time made the rulings upon said propositions of law as the same appear hereinbelow, which propositions of law and rulings thereon are as follows, viz:

In the Circuit Court of the United States for the Ninth Circuit and District of Nevada.

133 THE EUREKA CONSOLIDATED MINING COMPANY, Plaintiff,
*vs.*
THE RICHMOND MINING COMPANY ET AL., Defendants.

The defendant presents to the court the following propositions of law, and requests the court to rule upon the same:

1st. That patents from the United States government to claimants for mining lands issued under the act of Congress entitled "An act granting the right of way to ditch and canal owners over the public land, and for other purposes," approved July 26th, 1866, and the act entitled "An act to promote the development of the mining resources of the United States," approved May 10th, 1872, relate back to the time of the original location of the claimant upon which the patent issues, and perfects their right to the exclusion of all adverse intervening claims.

2nd. That the patents of the United States government to the Richmond Mining Comgany, dated April 13th, 1874, for the
134 mining lands respectively called the "Richmond" lode, and the "Tip-Top" lode relate back to the time of the original location of said mines respectively made on the 20th day of September, 1869, and perfects its right to said lands to the exclusion of all intervening claims.

3rd. Claimants on mining lands under the said act of July 26th, 1866, who had, prior to the 10th day of May, 1872, complied with the terms of said first-named act, and to which there was no adverse claim, were entitled to enter such land and receive a patent therefor, granting such mine, together with the right to follow such lode or vein therein, with its dips, angles, and variations, although it might enter the land adjoining, together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rule.

4th. The rights and interests of claimants as referred to in the last preceding proposition were not impaired or affected in any way by the act of May 10th, 1872, above referred to.

5th. Claimants entitled to patents under the act of 1866, above referred to, applying for the same after the 10th May, 1872, were entitled to receive a patent granting to them their mines lo-
135 cated prior to the last-named date, together with the right to

follow their veins or lodes, with their dips, angles, and variations to any depth, although they might enter the lands adjoining, together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules, and the addition thereto, all other veins and ledges throughout their entire depth, the tops or apexes of which lie inside of such surface lines extended downward vertically although such veins, lodes, or ledges might so far depart from a perpendicular course downward as to extend outside the vertical side line of the surface locations, subject to the provisions of section three (3) of said act of Congress of May 10th, 1872.

6th. The patents of the defendant put in evidence in this case are in accordance with the last preceding proposition.

7th. That the said patents to the defendants offered in evidence do not, as to the special and particular lodes therein named respectively limit or confine the defendants in their right to follow the vein or lode, with its dips, angles, and variations in their depth to such portions thereof as lie between vertical planes drawn
136 downward through the end lines of the location of the surface ground so continued in their own direction that such planes will intersect the exterior parts of said veins or ledges, but that such limit or restraint only applies to the veins or lodes other than the special lodes named and granted, which other lodes have their tops or apexes inside said surface lines extended downwards vertically.

8th. That the defendant, under its said patent for the "Richmond" mining ground, was and is authorized to follow the vein or lode therein called the "Richmond" lode, with its dips, angles, and variations, although it may enter the land adjoining, and that the first proviso in said patent contained does not apply to said "Richmond" lode.

9th. That the defendant, under its patent for the "Tip-Top" mining ground, was and is authorized to follow the vein or lode therein called the "Tip-Top" lode, with its angles and variations, although it may enter the land adjoining, and that the first proviso in said patent contained does not apply to said "Tip-Top" lode.

10th. That the patents of the plaintiffs to the mining lands called respectively the "Lupita lode," the "At Last lode," and the "Nuget lode" are each and all null and void in law, because the end
137 lines of neither of the locations of said claims were or are parallel to each other.

11th. That in case of any conflict between the defendant's said patents for the "Richmond" or "Tip Top" lodes on the one side and other of the patents of the plaintiff on the other side the rights of the defendant are older and paramount to the rights of the plaintiff.

12th. Where a party has obtained a patent for mining lands purporting to be a vein, lode, ledge, or deposit, which lands contain only segregated or isolated bodies of ore, not being a vein or lode in

a scientific point of view, he is limited to such segregated or isolated bodies as are granted by his patent, and has no right to other isolated and segregated bodies, the tops or apexes of which lie outside the surface lines of his location or grant extended down vertically.

13th. Isolated or segregated deposits or ore-bodies of gold, silver, cinnabar, lead, tin, copper, or other valuable minerals not contained in a fissure or vein or lode as scientifically defined could have been located and patented under the acts of Congress above referred to,

but such locators or grantees would not, by their locations or
138 patents thereof, become thereby entitled to other like isolated or segregated deposits or other bodies, the tops or apexes of which lie outside the surface lines of their location extended downward vertically.

In the Circuit Court of the United States for the District of Nevada.

THE EUREKA CONSOLIDATED MINING COMPANY
*vs.*
THE RICHMOND MINING COMPANY.

Ruling of the court upon the propositions of law made by the defendant.

1st. The first proposition is sustained with the addition of the qualification: Provided, that the prior right of the patentee, by virtue of his earlier location, has not been lost by a failure to contest the location of the intervening claimant, as provided in the act of 1872.

2d. The second proposition is sustained, the operation of the patents by relation being limited to the lands covered by them, except

as to the prior right of the patentees by virtue of their earlier
139 locations may have been lost by a failure to contest the location of the intervening claimant, as provided in the act of 1872.

3d. The third proposition is sustained, the words "to any depth" being inserted.

4th. The fourth proposition is sustained, the words "except as specified in the act of 1872" being added at the end.

5th. The fifth proposition is substantially correct and is sustained.

6th. The sixth proposition presents a question of fact to be determined by inspection of the patents.

7th. The seventh proposition is not sustained by the court.

8th. The eighth, ninth, tenth, and eleventh propositions are not sustained for the reasons stated in the opinion of the court.

9th. The twelfth and thirteenth propositions are irrelevant
140 hypothesis, and do not require any judgment of the court.

The propositions of law upon which the defendant asks the ruling of the court were handed to the court after the close of the testimony, and were considered with the testimony.

All the questions of law which the court deemed important to the decision of the case were then passed upon, and the rulings of the court thereon are stated in its opinion, to which reference is made.

To each and all which adverse rulings and modifications of the propositions the defendant, by its counsel, in due time excepted severally.

September 17th, 1877.

FIELD, *Presiding Justice.*
SAWYER, *Circuit Judge.*
HILLYER, *District Judge.*

141 And the defendant corporation then and there excepted separately to each and every of said adverse rulings and modifications of the said propositions so presented by said defendant corporation, and inasmuch as said exceptions do not otherwise appear, then and there prayed that this its bill of exceptions should be signed and sealed and made part of the record herein. All of which is done accordingly.

FIELD, *Presiding Justice.*
SAWYER, *Circuit Judge.*
HILLYER, *District Judge.*

(Endorsed:) U. S. Circuit Court, District of Nevada. The Eureka Consolidated Mining Company, plaintiff, vs. The Richmond Mining Company of Nevada. Bill of exceptions. Filed Oct. 1, 1877. T. J. Edwards, clerk.

142 *Writ of Error.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the Ninth Circuit and District of Nevada, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The Eureka Consolidated Mining Company, plaintiff, against The Richmond Mining Company of Nevada, defendant, a manifest error hath happened, to the great damage of the said The Richmond Mining Company of Nevada, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1878, in the said supreme court,

to be there and then held, that the record and proceedings aforesaid be inspected, the said supreme court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the independence of the United States the 102d.

The above writ of error is hereby allowed.

[SEAL.] T. J. EDWARDS,
*Clerk Circuit Court Dist. Nevada.*

143 (Endorsed:) United States Supreme Court. Eureka Con. M. Co. vs. Richmond M. Co. Writ of error. Filed Oct. 8, 1877. T. J. Edwards, Clerk U. S. Circt. Court, Dist. of Nevada.

144 *Citation.*

UNITED STATES OF AMERICA, *ss.*

To the Eureka Consolidated Mining Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday of October, A. D. 1878, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Ninth Circuit and District of Nevada, wherein the Richmond Mining Company of Nevada is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2d day of October, A. D. 1877, and of the independence of the United States the 102d.

LORENZO SAWYER,
*Circuit Judge.*

145 Due service of the within citation this day admitted, and a copy of the same served upon us.

San Francisco, Oct. 2d, 1877.

S. HEYDENFELDT,
GARBER & THORNTON,
*Plaintiff's Attorneys.*

(Endorsed:) United States Supreme Court. The Eureka Consolidated Mining Company, complainant, vs. The Richmond Mining Company of Nevada, defendant. Citation. Filed Oct. 8, 1878. T. J. Edwards, Clerk U. S. Cir. Court, Dist. Nevada.

146 *Bond.*

In the Supreme Court of the United States.

THE EUREKA CONSOLIDATED MINING COMPANY,
Plaintiff,
*vs.*
THE RICHMOND MINING COMPANY OF NEVADA,
Defendant.

Know all men by these presents, that we, Jonas Meyer and Mathias Meyer, are held and firmly bound unto The Eureka Consolidated Mining Company, in the sum of ten thousand dollars to be paid to the said The Eureka Consolidated Mining Company, or its successors.

To which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals, dated this 2nd day of October, A. D. 1877.

Whereas, the above-named Richmond Mining Company of Nevada hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the Circuit Court of the United States of the Ninth Circuit and District of Nevada. Now, therefore, the condi-
147 tion of this obligation is such that if the above-named The Richmond Mining Company of Nevada shall prosecute its said writ of error to effect, and answer all damages and costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JONAS MEYER. [SEAL.]
MATHIAS MEYER. [SEAL.]

Signed, sealed, and delivered in the presence of—

UNITED STATES OF AMERICA,
DISTRICT OF CALIFORNIA.

Jonas Meyer and Mathias Meyer, being duly sworn, each for himself deposes and says that he is a householder, and is worth the sum of ten thousand dollars, exclusive of property exempt from execution and over and above all his just debts and liabilities.

JONAS MEYER.
MATHIAS MEYER.

Subscribed and sworn to before me, this 2d day of October, A. D. 1877.

JOS. F. O'BEIRNE,
*Commr. U. S. Circuit Court, Cal.*

148 (Endorsed:) U. S. Supreme Court. The Eureka Consolidated Mining Company, plaintiff, vs. The Richmond Mining

Company of Nevada, defendant. Bond. Approved, Lorenzo Sawyer, circuit judge. Filed Oct. 8, 1877. T. J. Edwards, clerk U. S. Cir. Court, Dist. Nev.

149 In the Supreme Court of the United States.

THE RICHMOND MINING COMPANY ET AL., APPELLANTS, } Nos. 1,038
*vs.* } and 1,039
THE EUREKA CONSOLIDATED MINING COMPANY. } and 1,040.

It is hereby stipulated and agreed that the following papers and records were used on the trial of the above-entitled cases, both at law and in equity, and that the same constitute and are part of the record on the appeals and writs of error herein:

Richmond patent.
Tip-Top patent.
Utah notice of location.
Aretic notice of location.
Antarctic notice of location.
150 Atlantic notice of location.
Deed from Thomas Wren to the Richmond Mining Company of Nevada to the Utah claim.
Deed from R. Rickard to the Richmond Mining Company of Nevada to the Aretic claim.
Deed from Joseph Potts to the Richmond Mining Company of Nevada to the Antarctic claim.
Deed from the locator of the Atlantic claim to the Richmond Mining Company of Nevada to said claim.
Mining rules of the Eureka Mining District.
Supplemental mining rules of the Eureka Mining District.
Champion patent. Buckeye patent. At Last patent. Mammoth patent. Nuget patent. Lupita patent. Savage patent. Sentinel patent. Lookout patent.
Deed from complainant to defendant, Exhibit W.
Agreement between complainant and defendant, Exhibit X.
151 Deeds from complainant and defendant to each other, Exhibits W and Z.

And it is further stipulated and agreed that the clerk shall certify a transcript of the foregoing papers and records, together with this stipulation, and that the same may be annexed to the transcript at law and in equity, and used upon the hearing and decision of the above-entitled actions.

The object of this stipulation is to supply and cure all defects and omissions in the transcripts of the record in each and all of the above-entitled causes.

March 18th, 1878.

THOMAS WREN,
*For Appellants and Plffs. in Error.*
S. HEYDENFELDT
AND GARBER & THORNTON,
*For Respondents and Defendants in Error.*

152 EXHIBIT No. 8.

*Utah No. 2.*

*Notice.*—I have this day located this claim, to be known as the Utah No. 2, commencing at a stake and monument 47 ft. due north from the northeast corner of the Bell shaft, and running 528 ft. westerly, and in an easterly direction 865 ft.; 100 ft. wide northerly and southerly; bounded on the south by the Lupita and Margaret claim, and on the north by the Utah No. 1, and intend to work the same according to the laws of Eureka Mining District, and under the mining law of the act of Congress approved May 10th, 1876.

Ruby Hill, September 9th, 1876. JOSEPH POTTS.

Filed for record and recorded September 13th, 1876.

M. G. CAVANAUGH,
*Mining Recorder.*

153 EXHIBIT No. 9.

*Utah.*

I have this day located the Utah claim, consisting of eight hundred and seventy-four feet (874) in length by one hundred and ninety-eight (198) feet in width, situated on north side of Ruby Hill, running from the point where the ore was discovered immediately under this monument and notice, eight hundred and thirty-five (835) feet easterly and thirty-nine (39) feet westerly. The boundaries of this claim are plainly marked by stakes and stone monuments, and are more particularly described as follows:

Commencing at a post and stone monument, from whence the Lawton shaft of the E. C. M. Co. bears south 55 degrees, east eleven hundred and seventy-seven feet, and running thence north 33 degrees, east one hundred and ninety-eight feet, thence south 62½ degrees, west 874 feet, to place of beginning.

154 I claim all the privileges allowed by the mining laws of this district, and the act of Congress approved May 10, 1872.

THOMAS WREN.

Ruby Hill, Eureka District, January 7th, 1877.

Recorded January 16th, 1877.

M. G. CAVANAUGH,
*Mining Recorder.*
Per G. J. SCANLAND, *Deputy.*

155 "EXHIBIT A."

*Arctic.*

I hereby claim six hundred feet on this ledge, lode, or deposit discovered in the works of the Richmond Consolidated Mining Company

(limited) of London, and known as the Richmond ledge, lode, or deposit. My claim commences at the point upon said ledge, lode, or deposit perpendicularly underneath a stake and stone monument, where a small pine tree with three notches in blaze bears S. 63½° E. 42 feet distant, and running thence, 1st, S. 62½° E. 600 feet to stake, thence, 2d, S. 38° W. 203 feet and four inches to a stake, thence, 3d, N. 62½° W. 600 feet to a stake; thence N. 38° E. 203 feet and four inches to the place of beginning, together with all the dips, spurs, and angles of said ledge, lode, or deposit. Courses expressed from true meridian, mag. var. 16½° E.

October 2d, 1876. R. RICKARD.

To be known as the Arctic ledge.

Filed for record October 4th, 1876.

M. G. CAVANAUGH,
*Mining Recorder.*

156 *Antarctic.*

I hereby claim six hundred feet of the ledge, lode, or deposit discovered in the works of the Richmond Consolidated Mining Company (limited) of London, and known as the Richmond ledge, lode, or deposit.

My claim commences at a point upon said ledge, lode, or deposit perpendicularly underneath a stake and monument upon which this notice is posted, whence a mountain mahogany tree with three notches in blaze bears N. 78½° E. 26 feet distant, and running thence, 1st, S. 62½° E. 600 feet to stake, thence, 2d, N. 38° E. 203 feet and 4 inches to stake, thence, 3d, N. 62½° W. 600 feet to stake, thence, 4th, S. 38° W. 203 feet and 4 inches to the place of beginning, together with all the dips, spurs, and angles of said ledge, lode, or deposit. Courses expressed from the true meridian. Var. 16½ E. To be known as the Antarctic ledge.

May 8th, 1874. JOHN B. McGEE.

Filed for record May 10th, 1874.

M. G. CAVANAUGH,
*Mining Recorder.*

157 *Atlantic.*

I hereby claim six hundred feet on this ledge, lode, or deposit discovered in the works of the Richmond Consolidated Company (limited) of London, and known as the Richmond ledge, lode, or deposit. My claim commences at the point upon said ledge, lode, or deposit perpendicularly underneath a stake and stone monument, whence a small pine tree with three notches in blaze bears S. 63½° E. 42 feet distant, and running thence, 1st, S. 62½° E. 600 feet to stake; thence, 2d, N. 38° E. 203 feet and four inches to stake; thence, 3d, N. 62½° W. 600 feet to stake; thence, 4th, S. 38°

W. 203 feet and four inches to the place of beginning, together with all the dips, spurs, and angles of said ledge, lode, or deposit. Courses *courses* expressed from true meridian. Magnc. variation 16½° E. This shall be known as the Atlantic ledge.

May 8th, 1874.

THOMAS WREN.

Filed for record May 10th, 1874.

M. G. CAVANAUGH,
*Mining Recorder.*

158 EXHIBIT 6.

This indenture, made the twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-seven, between Thomas Wren, of the town and county of Eureka, State of Nevada, party of the first part, and the Richmond Mining Company of Nevada, a corporation duly organized and now existing under the laws of Nevada, the party of the second part, *witnesseth:*

That the said party of the first part, for and in consideration of the sum of five hundred (500) dollars, gold coin of the United States of America, to ———————— in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to its successors and assigns, all that certain mining claim,

159 ledge, lode, or deposit situate, lying, and being in the Eureka Mining District, Eureka county, State of Nevada, located, owned, and held in the name of the "Utah" claim, consisting of eight hundred and seventy-four (874) feet in length by one hundred and ninety-eight (198) feet in width, situated on the north side of Ruby Hill, running from the point where the ore was discovered immediately under the monument and notice, eight hundred and thirty-five (835) feet easterly and thirty-nine (39) feet westerly. The boundaries of this claim are plainly marked by stakes and stone monuments, and are more particularly described as follows: Commencing at a post and stone monument from whence the Lawton shaft of the E. C. M. Co. bears south 55° east eleven hundred and seventy-seven feet, and running thence north 33° east one hundred and ninety-eight feet, thence south 62° east 874 feet, thence south 33° west 198 feet, thence north 62½° west 874 feet, to place of

160 beginning; together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and, also and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate,

right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, its successors and assigns, forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[SEAL.] THOMAS WREN.

161 STATE OF NEVADA, } ss.
COUNTY OF EUREKA. }

On this 23d day of February, A. D. 1877, before me, F. H. Harmon, county clerk in and for said county, residing therein, and duly qualified, personally appeared Thomas Wren, whose name is subscribed to the annexed instrument as a party thereto, and who is personally known to me to be the individual described in, and who executed the annexed instrument, and who duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed the seal of the district court of the sixth judicial district, the day and year in this certificate first above written.

[OFFICIAL SEAL.] F. H. HARMON,
*County Clerk and ex-officio Clerk of the District Court, 6th Judicial District.*

162 EXHIBIT V.

This indenture, made the sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, between R. Rickard, of the town of Eureka, county of Eureka and State of Nevada, the party of the first part, and the Richmond Mining Company of Nevada, a corporation organized and existing under the laws of the State of Nevada, the party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five dollars ($5.00), gold coin of the United States of America, to him in hand paid bythe said party of the second part, the receipt whereof is acknowledged, has granted, bargained, sold, remised, released, and forever quit-claimed; and by these presents does grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to its successors forever,

163 that certain quartz lode and mining claim situate, lying, and being in the Eureka Mining District, county of Eureka and State of Nevada, known as and called the Arctic lode and claim, the same containing six hundred feet (600). Together with all the dips, spurs, and angles; and also all the metals, ores, gold

and silver bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said *property* of the first part, of, in, or to the said
164 premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[SEAL.] R. RICKARD.

STATE OF NEVADA, } ss.
COUNTY OF EUREKA. }

On this seventeenth day of October, A. D. one thousand eight hundred and seventy-six, personally appeared before me, T. Laspeyre, a notary public in and for the said county of Eureka, R. Rickard, whose name is subscribed to the annexed instrument, as a party thereto, personally known to me to be the same per-
165 son described in and who executed the said annexed instrument as party thereto, and the said R. Rickard duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] T. LASPEYRE,
*Notary Public.*

(Endorsed as follows:) Deed. R. Rickard to Richmond Mining Company. Dated October 16, 1876. Recorded at the request of T. Laspeyre, October 17th, A. D. 1876, at 15 minutes past 4 P. M., in Book 6 of Deeds, p. 13. Records of Eureka county, Nevada. R. L. Chase, recorder.

166 EXHIBIT 7.

*This indenture*, made the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy-six (1876), between Joseph Potts, of Ruby Hill, Eureka county, Nevada, the party of the first part, and the Richmond Mining Company of Nevada, a corporation organized and existing under the laws of the State of Nevada, the party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand ($1,000) dollars, gold coin of the United States of

America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to its successors and assigns forever, the following described quartz lodes and mining
167 claims situate, lying, and being in the Eureka Mining District, county of Eureka, State of Nevada, known and described as follows: The Cliff lode, containing 1,500 feet, situate on Ruby Hill, on the north side thereof, and lying east and northeast of the Antarctic claim or lode; the Utah, No. 2, on the north side of Ruby Hill and south of the Utah, No. 1, near the Bell shaft; the Pacific lode northwest of the Skylark, containing one thousand feet; together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein; and the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, rights, title, inter-
168 est, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[SEAL.] JOSEPH POTTS.

STATE OF NEVADA, } ss.
COUNTY OF EUREKA. }

On this first day of November, A. D. one thousand eight hundred and seventy-six, personally appeared before me, T. Laspeyre, a notary public in and for the county of Eureka, Joseph
169 Potts, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto; and the said Joseph Potts duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] T. LASPEYRE, *Notary Public.*

(Endorsed as follows:) Deed. Joseph Potts to Richmond Mining Company of Nevada. Recorded at the request of R. K. Mor-

rison, November 28th, A. D. 1876, at 30 minutes past 12 P. M., in Book 6 of Deeds, page 88, Records of Eureka county, Nevada. R. L. Chase, recorder.

170 *This indenture*, made the 28th day of October, in the year of our Lord one thousand eight hundred and seventy-six, between Thomas Wren, of the town of Eureka, county of Eureka and State of Nevada, the party of the first part, and the Richmond Mining Company of Nevada, a corporation organized and existing under the laws of the State of Nevada, the party of the second part,

*Witnesseth*, that the said party of the first part, for and in consideration of the sum of one hundred dollars, gold coin of the United States to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to his heirs and assigns,

That certain quartz lode and mining claim situate on Ruby Hill in the Eureka Mining District, county of Eureka and
171 State of Nevada, known as and called the Atlantic lode or claim, containing six hundred feet,

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances,

*To have and to hold* all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its heirs and assigns, forever.

172 *In witness whereof*, the party of the first part has hereunto set his hand and seal, the day and year first above written.

THOMAS WREN. [SEAL.]

Signed, sealed, and delivered in the presence of Crittenden Thornton.

Recorded at the request of Crit. Thornton, October 28th, A. D. 1876, at 15 min. past 11 A. M.

R. L. CHASE, *Recorder*.

STATE OF NEVADA, } ss.
COUNTY OF EUREKA. }

On this 28th day of October, A. D. one thousand eight hundred and seventy-six, personally appeared before me, T. Laspeyre, a no-

tary public in and for the said county of Eureka, Thos. Wren, whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person de-
173 scribed in and who executed the said annexed instrument as a party thereto, and the said Thos. Wren he duly acknowledged to me that executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

*In witness whereof*, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.] T. LASPEYRE,
*Notary Public.*

STATE OF NEVADA, } ss.
COUNTY OF EUREKA. }

I, R. L. Chase, recorder and ex-officio auditor in and for Eureka county, Nevada, do hereby certify that the foregoing constitutes a full, true, and correct copy of the instrument as recorded in Liber 6, pages 42 and 43, of the Records of Deeds of Eureka county, Nevada.

174 *In witness whereof*, I have hereunto set my hand and affixed my official seal, in office, this 25th day of July, 1878.

R. L. CHASE, *Recorder*,
By C. F. HORN, *Deputy*.

[SEAL.]

175 "EXHIBIT A."

General Land Office No. 390. Mineral Certificate No. 80.

The United States of America. To all to whom these presents shall come, greeting:

*Whereas*, in pursuance of the act of Congress, approved July twenty-sixth, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the *Eureka Consolidated Mining Company* upon the Champion lode, bearing silver, accompanied by the certificate of
176 the register of the land office at Austin, Nevada, in the State of Nevada, whereby it appears that in pursuance of said acts of Congress, the Eureka Consolidated Mining Company did, on the first day of April, A. D. 1871, enter and pay for said mining claim or premises, being Mineral Entry No. Eighty, in the series of said office, designated by the surveyor-general as lot No. thirty-eight (38), forming a portion of the unsurveyed public do-

main, in the Eureka Mining District in the county of Lander and State of Nevada, in the district of lands subject to sale at Austin, embracing one (1) acre and six-tenths ($1^{6}_{0}$) of an acre of land, more or less, and, according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees thirty (30) minutes east, to wit:

177 Beginning at a post marked "No. 1, U. S. Survey, No. 38," from which a prominent rocky point, No. 2, the summit of Silver Hill, bears south seventy-one (71) degrees thirty-seven (37) minutes east, at the distance of seven thousand and fifty-one (7,051) feet. The flag-staff in the town of Eureka bears north sixty (60) degrees forty-six (46) minutes east, at the distance of ten thousand one hundred and seventy-nine (10,179) feet, and post No. 4 of survey No. 37, made for the claim of the Eureka Consolidated Mining Company upon the Buckeye lode, bears north thirty-eight (38) degrees east, at the distance of fifty (50) feet; thence from said post marked "No. 1, U. S. Survey, No. 38," south thirty-eight (38) west, along the northwestern boundary of said survey No. 37, two hundred (200) feet to post marked "No. 2, U. S. Survey, No. 38," the same being post No. 3 of said survey No. 37; thence north fifty-two (52) degrees west, three hundred and fifty (350) feet to post marked "No. 3, U. S. Survey, No. 38;"

178 thence north thirty-eight (38) degrees east, two hundred (200) feet to post marked "No. 4, U. S. Survey, No. 38," from which the highest point of Ruby Hill, No. 1, bears north fifty-one (51) degrees thirty minutes (30) east, at the distance of eighty-eight (88) feet; thence south fifty-two (52) degrees east, three hundred and fifty (350) feet to the place of beginning, containing one (1) acre and six-tenths ($1^{6}_{0}$) of an acre of land, more or less, as represented by yellow shading in the following plat:

178 *Survey No. 38.*

Plat of the Eureka Consolidated Mining Company's Claim upon the Champion lode, Eureka Mining District, Lander County, Nevada, containing $1^{6}_{0}$ acres. Scale of 100 feet to an inch. Variation, 16° 30′ E.

179 *Now know ye*, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, *have given and granted*, and by these presents *do give and grant* unto the said Eureka Consolidated Mining Co., and to their successors and assigns, the said mining premises hereinbefore described as lot No. thirty-eight (38), forming a portion of the unsurveyed public domain, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of three hundred and fifty (350) linear feet of the said Champion vein, lode,

OFFICE SUPREME COURT U.S.
FILED
MAY 21 1881

ledge, or deposit as h[illegible] described [illegible]hout its en[illegible] although it may ent[illegible]e land adjoining; and of all vei[illegible] ledges, or deposits in th[illegible] downward course may so far dep[illegible] a perpendicular as to ex[illegible]d outside the vertical side lines [illegible] survey:

180 *Provided*, that the right of possession hereby granted to [illegible] outside parts of said veins, lodes, ledges, or deposits shall [illegible] confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits:

*And provided further*, that nothing in this conveyance shall authorize the grantees herein, their successors or assigns, to enter upon the *surface* of a mining claim owned or possessed by another:

*To have and to hold* said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said *Eureka Consolidated Mining Company*, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

*First.* That the grant hereby made is restricted to the land

181 hereinbefore described as lot number thirty-eight (38), with three hundred and fifty (350) linear feet of the *Champion* ve[illegible], lode, ledge, or deposit throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, and to which no valid adverse claim existed on the tenth day of May, eighteen hundred and seventy-two.

*Second.* That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

*Third.* That the premises hereby conveyed shall be held

182 subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

*Fourth.* That in the absence of necessary legislation by Congress, the legislature of Nevada may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made *patent*, and the *seal of the General Land Office* to be hereunto affixed.

main, in the[illegible]der my [illegible] city [illegible] gton, the sixteenth
State of Ne[illegible]uly, in the year of our Lord one [illegible] sand eight hundred
embracing [illegible]nty-two, and of the independence of the United States the
or less, a[illegible] [SEAL U. S. LAND OFFICE.]
Office, [illegible]
variat[illegible]

By the President:
U. S. GRANT,
By Z. B. STURGUS,
*Asst. Secretary.*
C. B. BRYNTON,
*Recorder of the General Land Office.*

Recorded Vol. 4, pages 270 to 276.

Recorded at request of Wells, Fargo & Co., Oct. 1st, A. D. 1872, at 30 min. past 5 P. M., in Liber 41 of Deeds, page 503.
H. J. BIDLEMAN, *Recorder.*

184 In the Circuit Court of the United States, Ninth Judicial Circuit, District of Nevada.

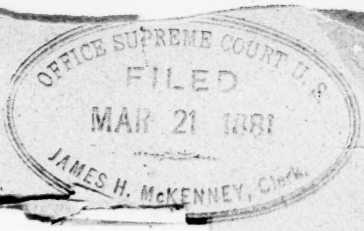
EUREKA CONSOLIDATED M. CO. *v.* RICHMOND MIN. CO. ET AL. } At law.

I, T. J. Edwards, clerk of the Circuit Court of the United States for the Ninth Circuit and District of Nevada, do hereby certify that the foregoing 125 printed and written pages, from 1 to 125 inclusive, are a true copy of the record and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit, this 12th day of December, A. D. 1878.

[SEAL.] T. J. EDWARDS, *Clerk.*

main, in th
State of N
embracin
or less,
Office,
vari


OFFICE SUPREME COURT U. S.
FILED
MAR 21 1881
JAMES H. McKENNEY, Clerk

TES.

rror.

main, in
State of
embrac
or less
Off

FILED
MAR 21 1901
JAMES H. MCKENNEY

# IN SUPREME COURT OF THE UNITED STATES.

ICHMOND MINING CO. OF NEVADA,
*Plaintiff in Error.*

*vs.*

THE EUREKA CONSOLIDATED MINING CO.
*Defendant in Error.*

## BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

S. M. WILSON
AND THOS. WREN,
*Counsel for Plaintiff in Error.*

R. O. POLKINHORN, PR., 622 AND 624 D STREET, WASHINGTON, D. C.

# In Supreme Court of the United States.

The Richmond Mining Co., of Nevada,
*Plaintiff in Error,*

*vs.*

The Eureka Consolidated Mining Company,
*Defendant in Error.*

Error to the Circuit Court of the United States for the District of Nevada.

## Brief on Behalf of the Plaintiff in Error.

### Statement of the Case.

This is an action of ejectment for mining-lands in the County of Eureka, State of Nevada. It was commenced by the defendant in error in one of the District Courts of that State, and was subsequently transferred to the Circuit Court of the United States for the District of Nevada. As originally commenced in the State Court, it was at once an action at law for the recovery of the mining ground, and a bill in equity to enjoin the plaintiff in error from committing waste—a union of causes of action allowed by the State practice.

On the transfer to the United States Circuit Court, the pleadings were amended, and the action divided into two

separate causes—one the present action of ejectment, and the other a distinct bill in equity for an injunction. The facts, however, were common to both cases, and by agreement they were tried in the Circuit Court together, the mere form of separate proceedings being carried out.

The present suit is ejectment, and, a jury being expressly waived, was tried by the court, which decided in favor of the defendant in error, who was the plaintiff below. The principal question involved is one of the title of the defendant in error to the mining ground from which, it is alleged, the plaintiff in error ousted the defendant in error.

The court filed special findings, and the questions are raised as well upon the findings as upon a bill of exceptions and the pleadings.

The complaint describes a series of lodes and pieces of mining ground, of which it is alleged the defendant in error is owner. The maps in the record show the claims referred to in the complaint.

The *first* description is of 1,250 feet of a lode called Eureka Consolidated lode. The point of commencement is in the northwesterly line of the At Last claim, as marked on the maps, 47 feet from the Champion ground, and extending at right angles to said northwesterly line of the At Last, southeasterly to a point 112 1–5 feet beyond the southeasterly line of the Mammoth claim, together with 300 feet of surface on each side of the line 1,250 feet long. This surface embraces all of the Champion, At Last, Buckeye, and Mammoth, part of the Margaret or Lupita, part of the Sentinel, part of the Nuget, and part of the Savage. It is to be noted particularly that the lode for the length of 1,250 feet is claimed, and that the surface-ground is of the same length and 600 feet wide.

The *second* description is of "all lodes, veins, and ledges bearing silver," etc., through their entire depth, the top or apex of which lies inside of said surface lines and vertical planes drawn downward, as described.

The *third* description is substantially the surface ground of the At Last, Lupita, Elliptic, Sentinel, and Mammoth claims, as marked on the maps.

The *fourth* description is of all lodes, veins, and ledges throughout their entire depth, the top or apex of which lies inside the surface lines last described extended downward, etc., excepting a triangular part of the Champion at the westerly corner and marked off on the map.

It will be seen, by comparing the descriptions, with the maps, that we have two pieces of surface described, having a large part common to both, and that we have one specific lode claimed, and also all lodes and veins the top or apex of which lies inside of the surface described, with their dips, spurs and angles.

It is not pretended or averred that the plaintiff in error (defendant below) ever ousted the defendant in error (plaintiff below) from *all* of the several veins or lodes described, or from *any part whatever of the surface* ground described, but the allegation of ouster is of "*a portion thereof, to wit, that portion thereof which has been exposed, opened, cut and worked in the drifts and excavations, from the Richmond working shaft.*" (Transcript, p. 3.)

The judgment is for the recovery of "the mining ground and premises described in the said complaint"—that is, all of it (p. 79.)—and is not limited to the *portion* of "the mining ground and premises described in said complaint" which it is alleged the defendant below entered upon, "to wit, that portion thereof which has been exposed, opened, cut, and worked in the drifts and excavations from the Richmond working shaft." (p. 3.)

The portions of the mining ground last above referred to can only be ascertained by examining the map of the Richmond mines annexed to the transcript, and will be found to lie at, andadjacent to, what is called the "Potts Chamber," and under the surface ground marked "Utah," "Arctic" and "Atlantic." The Richmond shaft referred to will also be found on the same map, somewhat north of west of the "Potts Chamber."

Both parties claim under United States patents.

At the time of the commencement of the action, the Richmond company was in possession of the surface ground marked on the map as Utah, Arctic and Atlantic, and had located mining claims upon the same, and was, *prima facie* entitled to everything underneath the surface; and the Eureka Company only claimed to be entitled to the underground mineral lying beneath the surface of those claims, on the ground that those portions entered upon by the Richmond Company were on the dip of the portions of the lode or lodes claimed by the Eureka Company, under United Stated patents, for the Nuget, Champion, and At Last claims, and its location of the Lupita, for the patent for the latter was not issued until after suit brought. These several claims of the Eureka Company, as well as the patented claims of the Richmond Company—"Richmond," "Tip Top," and "Look Out"—are all marked on the map forming part of the record.

The Eureka Company contends—

*First*, that the ground covered by all these various claims marked on the map, is one gigantic lode, consisting of the whole limestone zone in which the mineral is found, having a footwall of quartzite and overhanging wall of shale; and that the mining ground in controversy lies on the dip of the lode, within the surface-end lines of the Eureka Com-

pany's claims extended downward vertically, and produced as far as the dip extends.

*Second.* That as the mining ground in controversy lies to the southeast of a line marked on the map as extending from X to R, produced indefinitely in the direction of the Potts Chamber, and that the Richmond is cut off from whatever rights it might otherwise have had by the agreement and deed found in the record, and marked respectively "Exhibit X," (p. 70, "Exhibit Y," (p. 74) and "Exhibit Z." (p. 77.)

*Third.* That by reason of the omission of the Richmond Company to file in the local land office an adverse claim at the time of the application of the Eureka Company for its patents, the Richmond Company lost whatever right or claim it had to the property in controversy.

The Richmond Company controverts all of the above propositions, of the Eureka Company, and contends:

*First.* That the limestone zone is not one great lode, within the meaning of the term as used in the Acts of Congress, but contains a large number of distinct veins or lodes, and deposits; and that the ground in controversy does not lie on the dip of any lode to which the Eureka Company is entitled; and that the Eureka Company has no right or title to any of the ores deposited therein.

*Second.* That the claim called the "Richmond," belonging to the Richmond Company, was located under the Act of Congress of July 26th, 1866, (14 U. S. Stat. at Large, 251) by virtue of which, and the patent subsequently issued upon the same, said company became entitled to five hundred and one and one-half (501½) linear feet upon said lode, the course of which extends northwesterly and southeasterly; and that the dip of said lode is at right angles to its

~~course~~ strike, and that the mining ground in dispute is within the Richmond lode, and within planes drawn vertically down through the termini of said 501½ linear feet of the patented location of the Richmond claim, at right angles to the ~~course~~ strike of the lode, and produced so as to follow the dip of the lode; and that the top or apex of the lode, of which the ground in dispute is a part, is within the surface line of the Richmond Company's patented location.

*Third.* That the locations and claims of the Richmond Company are older and better than those of the Eureka Company, including the Champion claim, and that the Richmond Company had a claim and rights to the mining ground in dispute adverse to the Eureka Company at the date of the passage of the Act of Congress of May 10th, 1872 (17 U. S. Stat. at Large, p. 91), and that the mining grounds, property and rights granted to the Eureka Company by virtue of its said patents were all subject and subordinate to the said earlier adverse claims and rights of the Richmond Company.

*Fourth.* That the only patents of the Eureka Company that can be held to have any effect or relation to the mining ground in controversy are those for the respective claims called Lupita, At Last, Nuget, and Champion; and that the first three are null and void, being issued in violation of the said Act of Congress of May 10th, 1872, as the end lines of the surface location of each, are not parallel with each other; and that the Richmond patent, being upon an elder location, conveys a title paramount and superior to the patent for the Champion claim.

*Fifth.* That the compromise line described in said Exhibits X, Y, and Z only binds the parties, and was only intended to bind them, so far as the lands were concerned that lie in the claims called Margaret, At Last, Champion and Nuget, Richmond, Look Out, Tip Top, and the land which

joins the Look Out, opposite the Margaret and extending from the Look Out to the point marked X, which is the beginning of the compromise line; and that so far as the lands in controversy lying at and adjacent to the Potts Chamber are concerned, the parties stand on their respective rights independently of the compromise.

*Sixth.* That there was no obligation upon the Richmond Company to file any adverse claim or claims in the local land office, when the Eureka Company applied for a patent, because the surface ground was not in controversy; nor did the Richmond Company claim on the course of the lode any part claimed by the Eureka Company; and that the statute controls the form of patents, and any controversy on such adverse claim would have accomplished nothing.

---

## Assignments of Error.

The plaintiff in error assigns the following errors of the Circuit Court upon which it relies for a reversal of the judgment in this case, that is to say:

I.

The Court erred in rendering judgment for the Eureka Consolidated Mining Company, plaintiff in the court below, because the facts found by the Court, in its special finding in this case, are not sufficient to support the judgment, for the following reasons:

*First.* It is not found by the Court that the Eureka Company was at any time the owner, or was seized or possessed, of the mining-ground in controversy, viz., that portion of the lands described in the complaint of the plaintiff below,

which had been exposed, open, cut, and worked in the drifts and excavations from the Richmond working-shaft.

*Second.* It was not found by the Court that the Richmond Company had entered upon any ground or mine of the Eureka Company, or had ousted or ejected the Eureka Company therefrom.

*Third.* It appears from the findings that the Richmond Company did not enter upon or withhold from the Eureka Company any part whatever of the surface grounds of the patented locations of the Eureka Company, or enter under said surface grounds; and the facts found are not sufficient to show that the Richmond Company entered upon any vein, lode, or ledge, of the Eureka Company, the dip of which extended outside of the side-lines of any of the patented locations of said Eureka Company.

*Fourth.* The Court does not find as a fact that the zone of limestone referred to in the fourth finding (p. 27 *et seq.*), is a vein, lode, or ledge of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or any other valuable deposits; or that the same is a vein, lode, or ledge, within the meaning of the Act of Congress entitled "An Act granting the right of way to ditch and canal owners over the public land, and for other purposes," approved July 26, 1866; or within the meaning of the Act of Congress entitled "An Act to promote the development of the mining resources of the United States," approved May 10th, 1872.

*Fifth.* It appears from the fourth finding (pp. 27, 28, 29) of the Court that the zone of limestone described therein is not a vein, lode, or ledge, within the meaning of either of those terms, as used in the Acts of Congress above referred to.

*Sixth.* The possession by the Richmond Company of the property in controversy created a presumption of right and ownership in the said Company not overcome by any of the facts contained in the finding.

*Seventh.* The facts found show that the mining ground in controversy is on the dip of the principal lode described in the patents of the Richmond Company, and within planes drawn vertically down through the extreme points of said patented locations of the Richmond and Tip Top claims at right angles to the ~~course~~ strike of said lode, and produced so as to follow the dip of the lode; and the top or apex of said lode is within the surface lines of said patents to the Richmond Company, and said lode dips at right angles to its ~~course~~ strike, and on such dip extends under the surface of the Utah, Arctic, and Atlantic claims of the Richmond Company.

*Eighth.* The facts found, show that the mining ground in controversy is on the dip of the principal lode, or Richmond vein, described in the patent to the Richmond Company, (Exhibit R, pp., 112, *et seq.*,) and within planes drawn vertically down through the termini of the 501½ linear feet of said lode, described in said patent, at right angles to the ~~course~~ strike of said lode, and produced so as to follow the dip of said lode. And the top or apex of said lode is within the surface lines of said patent, and said lode dips at right angles to its ~~course~~ strike, and on said dip extends under the surface of the Utah, Artic, and Atlantic claims of the Richmond Company.

*Ninth.* The facts found, show that the mining ground in dispute is within the principal lode, described in the patent for the Look Out mining claim, (conveyed by the plaintiff below to the defendant below) and within planes drawn

vertically down through the extreme points of the patented location of said Look Out claim at right angles to the course or strike of the said lode, or ledge, and produced so as to follow the dip of the lode, and that said mining ground is outside of the agreement and deeds, marked X, Y, Z.

*Tenth.* It appears from the findings, that the location of the mining claim of the Richmond Company, called the Richmond, was older and earlier than that of any of the patented locations of the Eureka Company, and especially of the Champion lode; and the said Richmond Company's patent for said Richmond claim vested in said Richmond Company, a title to the mining ground in controversy, paramount and superior to the claim of the said Eureka Company.

*Eleventh.* The fourth finding (page, 27, 28, 29,) is in itself inconsistent and irreconcilable, inasmuch as it finds that the zone of limestone therein described is a lode or ledge as therein described

*Twelfth.* The fourth finding (page 29) does not show at what period of time the miners, and those familiar with mining, referred to in said finding, denominated such a zone a lode or ledge, nor whether before or after the passage of the Acts of Congress above referred to; and the sixth finding (page 29,) shows that on the 27th of February, 1869, the terms lode and ledge were not applied to zones of limestone in the Eureka District.

*Thirteenth.* The twenty-first finding (p. 31) is not a finding of fact, but an erroneous construction of the agreement marked X (p. 71), and the said deeds executed pursuant thereto (pp. 74–77); and especially for the reason that the compromise line therein referred to is described therein as

"commencing at the northeasterly corner of the Margaret mining ground, or claim, which corner is marked X on the map or plan hereto [thereto] annexed, and made part of the agreement, and running thence in a southwesterly direction," as shown in the finding, which is not towards, but away from the property in controversy; and said line is not a right line, but consists of three different courses.

*Fourteenth.* The twenty-second finding (p. 31) merely finds that planes drawn down vertically through the *end-lines* of any of the patented locations of the defendant, do not embrace within them the mining ground in dispute; but does not find, nor is it anywhere found that planes drawn down vertically through the extreme points of the 501½ linear feet of the patented locations of the Richmond claim at right angles to the course of said lode or ledge, and produced so as to follow the dip of said lode, do not embrace within them the mining ground in dispute.

*Fifteenth.* It appears from the findings that the patents for the mining locations called the Nuget, At Last, Lupita or Margaret, Mammoth and Sentinel claims are each null and void, as being issued in contravention of the said Act of Congress, approved May 10th, 1872, inasmuch as the end-lines of said respective claims are not parallel to each other; or, at best, said patents are not effective to give the claimants under said patents any right, title or estate in or to any mining ground outside of the vertical side-lines of said patented locations. (pp. 38–41–49–51–54.)

*Sixteenth.* The patent for the Lupita claim (Exhibit J, p. 54), referred to in finding seven (p. 29), bears date the 30th of March, 1877; and no other findings exist, as to the rights of the plaintiff below to said Lupita claim, whilst this action was commenced prior to the 7th of March, 1877. (See pp. 7–11, Transcript.

*Seventeenth.* The conclusion of law drawn by the court below from the facts found was erroneous, inasmuch as the Court should have found that the plaintiff below was not the owner of the mining ground in dispute at the time of the commencement of this action, and the defendant in error did not wrongly withhold the possession of said premises from the said plaintiff: and the court should have ordered judgment for the said defendant.

*Eighteenth.* The judgment rendered was for the mining ground and premises described in the complaint and for the possession thereof, (p. 79), whilst the ground in dispute, and whereof it was alleged that the defendant below had ousted the plaintiff, was only a portion of the land described in the complaint, "to wit, that portion thereof which has been exposed, opened, cut and worked in the drifts and excavations from the Richmond's working-shaft. (p. 3, Transcript.)

II.

The Court erred in the following particulars:

*First.* In modifying (p. 83, Transcript) and refusing to sustain without such modification, the *first* proposition of the plaintiff in error, found at p. 81 of the Transcript.

*Second.* In modifying (p. 83) and refusing to sustain without such modification, the *second* proposition of plaintiff in error, found at p. 81 of the Transcript.

*Third.* In refusing to sustain the *sixth* proposition of plaintiff in error, found at p. 82 of the Transcript. (See p. 83.)

*Fourth.* In refusing to sustain the seventh proposition of plaintiff in error., pp. 82–83, Transcript.

*Fifth.* In refusing to sustain the *eigth* proposition of plaintiff in error, pp. 82, 83 of Transcript.

*Sixth.* In refusing to sustain the *ninth* proposition of plaintiff in error, pp. 82, 83 of Transcript.

*Seventh.* In refusing to sustain the *tenth* proposition of plaintiff in error, pp. 82, 83 of Transcript.

*Eighth.* In refusing to sustain the *eleventh* proposition of plaintiff in error, pp. 82, 83 of Transcript.

*Ninth.* In refusing to sustain the *twelfth* and *thirteenth*, and each of them, pp. 82, 83 of Transcript.

*Tenth.* The Court erred in holding that the zone of limestone lying between the quartzite and shale, and within which the lodes, veins, and deposits of ore are situated, upon which the mining claims of the Eureka Company and the Richmond, Tip Top, and Look Out mining claims of the Richmond Company are located, is a lode in the sense in which that term is used by miners, or in which it is used in the Acts of Congress.

The term is used in the Acts of Congress in the sense in which it is generally understood and defined. The terms lode, vein, or ledge are not applied to, nor is either of them the synonym of, a zone of rock in which separate ore-bodies and deposits are found, with large spaces of barren rock intervening between them.

The miners of the Eureka mining district, in which this zone is situated, by their laws and usages have always defined and located the ore-bodies found within this zone as lodes, veins, or deposits, and have never defined this zone as a lode, vein, or ledge, as appears from the record in this case.

*Eleventh.* The Court erred in holding that the Richmond Company had lost the right to follow the Richmond lode

on its dip, to any depth, although it might enter the land adjoining, by a failure to file an adverse claim against the application of the Eureka Company for a patent to the Champion lode. The location of the Richmond claim secured the right under the Act of Congress of July 26th, 1866, to follow the Richmond vein or lode on its dip, though it might enter the land adjoining; and this right was reserved to the Richmond Company by the Act of Congress of May 10th, 1872, and by the patent granted to the Eureka Company for the Champion lode, and was confirmed to the Richmond Company by its patent to the Richmond vein or lode, and no adverse claim was required to be filed, or would have been allowed by the Land Department of the Government, based upon this right. Under the Act of Congress of May 10th, 1872, no conflict arose or could arise between the Eureka Company and the Richmond Company upon the application of the Eureka Company for a patent to the Champion claim, based upon this right.

*Twelfth.* The Court erred in holding that the patents of the Eureka Company for the At Last, Lupita, Sentinel, Elliptic, Mammoth, and Nuget claims were valid. The law of May 10th, 1872, requires the end-lines of surveys for patents to mining claims to be parallel. The end-lines of said claims are not parallel, and the patents thereto were therefore invalid and void.

*Thirteenth.* The Court erred in holding that the Eureka Company, under its patent to the Champion claim, was entitled to follow the Champion lode within planes drawn vertically down through the end lines of the claim; and so produced as to follow the lode to any depth, although it might enter the land adjoining.

Under the law of May 10th, 1872, this right was only granted to the company under the Champion patent, where no adverse claim existed at the time of the passage of the

law. At the time the law was passed, the Richmond Company had a valid adverse claim to all that portion of the Richmond lode on its dip, lying within planes drawn vertically down through the termini of the 501½ lineal feet of said lode described in the Richmond patent, at right angles to the strike or course of said lode, and produced so as to follow the dip of the lode.

*Fourteenth.* The court erred in holding that the Richmond Company was restricted by the law of May 10th, 1872, by its patent to the Richmond claim, to such portions of the Richmond vein or lode as lie outside of the surface end lines of said claim extended downward vertically, as lie between vertical planes drawn through the end-lines of the Richmond surface location, and so continued in their own direction that such planes would intersect such exterior parts of the vein or lode.

Under the Act of Congress of July 26th, 1866, the locators of the Richmond claim, by virtue of their location, secured the right to follow the Richmond vein or lode on its dip to any depth, although it might enter the land adjoining.

The law of May 10th, 1872, preserved this right, and the right was confirmed and granted by the patent to the claim. The vein or lode on its dip extends outside of the exterior lines of the surface of the Richmond claim, on its dip, and to the southeast of the said planes; and on its dip includes the mining ground in controversy.

*Fifteenth.* The Court erred (if the zone of limestone be a lode) in holding that the Richmond Company did not have the right to follow it on its dip to any depth, although in its course downward it might enter the land adjoining. The location of the Richmond claim, if the zone is held to be a lode, secured the right under the Act of Congress of July 26th, 1866, to follow the zone downward on its dip to

any depth, although it might enter the land adjoining; and the Act of Congress of May 10th, 1872, preserved that right; and the patent for the claim issued to it granted the right.

## POINTS.

The points on which the Richmond Company, plaintiff in error, relies for a reversal, are so fully set out above in the statement of the contention of the respective parties, that we beg leave to refer to them for the sake of brevity, and to make a more succinct statement here. It will be seen by what has already been stated, and by referring to the maps, which are made part of the record, that the disputed ground is not a part of any surface location, but lies beneath the surface of the mining claims of the Richmond Company, marked on the maps as Utah, Arctic, and Atlantic. The Eureka Company sets up no claim to any of the surface under which the disputed mine lies; and in order to recover, must show that such underground mines lie on the dip, and are part of a lode, to which the Eureka Company has a title paramount and superior to any title of the Richmond Company. The whole theory of the Eureka Company—the entire basis of its rights—is, that there is at the *locus in quo* but one gigantic lode; or, in other words, that the whole zone of limestone constitutes a lode, and that the dip of that lode extends from its patented locations, Champion, etc., and within the end lines of said claims, to and under the surface of the Utah, Arctic, and Atlantic; and hence the disputed underground mines are the property of the Eureka Company.

### I.

The limestone zone referred to and described in the findings, is not one great lode, but is merely a zone, embracing a series of lodes and ore bodies.

Veins or lodes are aggregation, of mineral matter in fissures of rock.

The rock in which a lode occurs is called the country rock or wall rock, and those sides next to the lode the walls. When the lode is not perpendicular, the wall over it is called the hanging wall, and the wall under it is the foot wall.

The extension of a lode in a horizontal direction is the strike. The angle which a lode makes to the plane of the horizon is its dip. The outcrop of a vein is that portion of a vein appearing at the surface.

Von Cotta's Treatise on Ore Deposits, Prime's translation, p. 28, sec. 16.

When a fissure is formed, it must necessarily be through pre-existing rock. If the fissure is not perpendicular, the upper wall or boundary of the fissure is the hanging-wall, and the lower wall or boundary of the fissure is the foot-wall. If subsequently the fissure is filled with ore, it becomes a lode or vein, and the hanging wall of the fissure becomes a hanging-wall and upper boundary of the lode or vein, and the lower wall of the fissure becomes the foot-wall and lower boundary of the lode: and the rock through which the fissure was opened, and through which the subsequently formed lode runs, becomes the country rock or wall-rock of the lode.

These definitions are all very simple and easily understood, and this case upon the facts is very simple and easily understood; and by keeping in mind these simple definitions and applying them to the FACTS in this case, there will be no difficulty in arriving at correct and just conclusions.

The principale ore-bodies found in this zone of limestone are fissure veins, and their boundaries in most cases is the limestone.

The fissures were opened through the limestone, the pre-existing rock; the walls of the fissures are the limestone; and when the ore was deposited, the limestone became the walls of the lodes—the country rock or wall-rock.

The Court will take judicial notice of the facts drawn from science, relating to geology and mineralogy, and may consult works on science and art touching the topics on trial, and is not limited to legal literature. The court will take notice of the demonstrable conclusions of science.

1 Wharton's Law of Ev. (2d ed.) secs. 282–335.
*Brown* v. *Piper*, 91 U. S. (1 Otto) 37.

The court will therefore take judicial notice that the limestone and the adjacent rock referred to in the findings were of sedimentary origin, deposited under the bed of the ocean, and raised to their present elevation by some great force of nature, and that fissures were formed in the limestone by the same force; and that waters, coming up from below through these fissures, charged with carbonic acid, would dissolve out the limestone more in some places than others, and form caves and cavities, and that ore came up from great depth below in solution through the fissures, and was deposited in the fissures and cavities thus prepared for its reception.

It is clear from the finding (pp. 28–29) viewed from the stand-point of scientific information, that most of the bodies of ore in the zone of limestone, are veins or lodes, in the sense in which those terms are used in works on mining and mining geology, both in their mode of formation and occurrence.

"They are aggregations of mineral matter in fissures" in the limestone. The limestone, in nearly every case, forms the walls of the lodes.

This is the view the judges who tried the case evidently held. In the opinion they say:

"If the scientific definition of a lode, as given by geologists, could be accepted as the only proper one in this case, the theory of distinct veins existing in distinct fissures of the limestone would be not only plausible, but reasonable; for that definition is not met by the conditions in which the Eureka mineralized zone appears. But as that definition cannot be accepted, and the zone presents the case of a lode, as that term is understood by miners, the theory of separate veins, as distinct and disconnected bodies of ore, falls to the ground. It is, therefore, of little consequence what name is given to the bodies of ore in the limestone; whether they be called pipe-veins, rake-veins, or pipes of ore, or receive the new designation suggested by one of the witnesses; they are but parts of one greater deposit, which permeates, in a greater or less degree, with occasional intervening spaces of barren rock, the whole mass of limestone, from the Jackson mine to the Richmond, inclusive."

So too, in the fourth finding, (pp. 28–29), the court finds —"Throughout this altered zone of limestone, mineral is found in *numerous fissures*, caverns and cavities, and in the loose material of the rock *in various forms*, appearing sometimes in a series or succession of ore bodies more or less connected, sometimes in apparently isolated chambers, and in others in small bodies, Yuggs, and in scattered veins."

The application of the word "vein" and "lode" to deposits of ore originated in England, and we received them, with their accepted definition, along with our language and our laws, from the mother country.

For a correct definition of the words, then, we must look to the country from which we borrowed them, unless the definition has been since changed, in some legal mode.

In England, in works on mining and mining geology,

we find the words defined with sufficient accuracy, and applied to a class of ore-bodies occurring in zones of limestone of sedimentary origin, as all limestones are similar in form to those found in this zone of limestone—of fissure origin—and the productive portions of the fissures, and in many instances the fissure itself confined to the limestone.

But the Court holds, in effect, as we understand the opinion, that the zone of limestone is also a lode, and that the numerous lodes found in this zone are but part of a greater whole; that the greater includes the lesser, and that, therefore, the Eureka Company, under the Champion patents, takes all of the lodes found within this zone on its dip lying between planes drawn vertically down through the Champion end-lines, and continued in their own direction to any depth, so as to intersect the zone. Was the definition of the terms vein or lode changed in this country before the passage of the Act of Congress of July 26th, 1866? Has it been changed since? The plaintiff contends, and the Court held, that it has been changed; but at what time does not appear, or in what localities in this country it has been changed does not appear.

A comparison of the limestone zone, as described in the fourth finding (pp. 28–29), with the definitions of lodes contained in all standard works, will show that a zone and lode are not to be confounded; but that you may have many lodes in a zone, as well as other forms of deposit.

Prof. Whitney, in his work entitled "Metallic Wealth of the United States," describes "veins" as follows: "By vein, as a geological and mining term in general, is understood an aggregation of mineral matter of indefinite length and breadth, and comparatively small thickness, differing in character from, and posterior in information to, the rocks which inclose it"

Von Cotta, in his "Treatise on Ore Deposits," (Ameri-

can Translation, by Frederick Prime, Jr., New York, 1870, pp. 26, 64 and 526) says: "Veins are aggregations of mineral matter in fissures of rock. Lodes are, therefore, aggregations of mineral matter containing ore in fissures" (p. 26). "Since, according to our definition, all true lodes are aggregates of mineral matter in fissures, fissures must, necessarily, have first been formed and then filled" (p. 64). "From this, however, we merely ascertain that all lodes are more recent than their wall rock" (p. 526).

Mr. Justice Sawyer, one of the justices who concurred in the opinion and decision in the court below, seems to have somewhat modified his views since, for in *North Noonday M. Co.* vs. *Oriental M. Co.*, 1 Federal Reporter, 552 (decided May, 1880), he defined a lode as follows: "A vein or lode authorized to be located is a seam or fissure in the earth's crust filled with quartz, or some other kind of rock in place, carrying gold, silver, or other valuable mineral deposits named in the statute. It may be very thin or many feet thick, or irregular in thickness, and it may be rich or poor—provided it contains a trace of any of the metals named in the statute."

Two of the justices who tried this case in the court below—J. J. Sawyer and Hillyer—found it necessary, also, in the case of *Mt. Diablo Mill & M. Co.* vs. *Callison*, March T., 1879, S. Sawyer ~~Federal Reporter~~, p. 439, to modify and explain these views still further. They say: "It was never intended in that case to hold that every metalliferous zone of country to which boundaries could be found must be regarded as one vein or lode, for this would be to reduce all mining districts to one lode. * * * Having such a zone or district, when we find within it fissures like that opened by the Callison filled with ore, we think we must regard them as veins or lodes. For while metalliferous rock in place may be so found within defined bounda-

ries as to require recognition as a lode, although not in a fissure, a broad, metalliferous zone cannot be permitted to swallow up, under the name lode, true fissure-veins within its limits."

In common parlance many speak of a vein as being a mere fissure in the rock, but a lode expresses more exactly the idea of ore in fissures. Upon that subject there is no difference of opinion; and the Acts of Congress referred to, when using the words veins or lodes, manifestly mean those which are defined and recognized as such in the sceintific works on the subject.

The Acts of Congress referred to contemplate the close proximity of separate and distinct veins or lodes, and provides for their junction, intersection, or crossing, and also that there may be mines which are in isolated or segregated masses, deposits or ore-bodies, or other forms of deposit; that there may be placer locations which contain inside their surface lines, veins or lodes. They contemplate the very close proximity of different veins or lodes, because in the small and limited surface of one location it provides for other lodes, (distinct from that which is the principal object of location) having their tops or apexes inside of the surface lines. They contemplate, also, the possibility of there being still deeper in the earth other lodes, with a parallel dip, all under one surface. It is not uncommon to find one lode overlying another. The top or apex of one lode may be in the Champion, another in the At Last, another in the Margaret, another in the Utah, another in the Arctic, and another in the Atlantic. The lode which has its top or apex in the Champion, may descend upon its dip until at a great depth it passes under the surface of the Atlantic. The Acts of Congress contemplate such possibilities, and provide for them, and give to the man who has a patent to the lode which has its top or apex in the Champion, the right to follow that lode underneath all

of these surface locations. So, with the At Last, and so with the Margaret—each man following in somewhat parallel lines through the land of his neighbor, but underneath the surface, upon the dip of his lode, and each preserving his separate right. These lodes may dip at different angles, and after a while may come together and intersect or join and become one, as provided for in Section 14 of the Act of 1872. "Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; *provided, however*, that the subsequent location shall have the right of way through said space of intersection for the purposes of the convenient working of the said mine; *and provided also*, that where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection."

This contemplation of the close proximity of separate lodes, is in exact accordance with the facts as they exist. Where you find one lode, you are almost certain to find other lodes; the existence of one is an indication of the existence of another. And so it is laid down in Von Cotta, and other writers upon the subject.

We all know that when a miner discovers a lode in a certain district, other miners from all parts of the country flock there in expectation of finding other lodes in the immediate vicinity. We mention this for the reason that the Court below seemed to be impressed with the view that when you find ore-bodies in close proximity to each other, it indicates that all belong to one lode and constitute a unit; whereas the whole theory of the books, "the literature of mining," assumes that different ore-bodies, with separate identity, will be found, and almost always are found, in close proximity. The Act of Congress provides for it, as shown.

The case of Van Valkenburg vs. Huff, 1 Nevada R. 142, presents an instance of two distinct lodes having apparently one outcrop, or at least lying in such close proximity that practical miners at first doubted whether there was one lode or two.

Why is it that you find lodes in close proximity? It is very easy to account for the fact, stated in the books and contemplated by the Acts of Congress and the miners' rules, that where one lode is found the great probability is that others are in the immediate vicinity. All agree that the quartzite, limestone, and shale found on Ruby Hill were originally sedimentary deposits under the ocean, and were laid down successively in the order named—that is to say, first the quartzite, then the limestone, and next the shale. These strata have been upheaved at an early period by some great power of nature, and thus have been forced to their present position. Now the same power which breaks up the rock and makes one vein or fissure, is very certain to break more than one in the same vicinity. After this came the ore-bearing material, from some deep source, in vapors or solution, and filled the different veins and fissures previously formed. The limestone is easily fissured, and the action of acids upon it readily enlarged the fissures and created the chambers for the reception, subsequently, of the ore-bodies.

These different lines of fissures—these veins in the limestone filled with ore—are regarded by the scientific writers, by the common miners, and by the Acts of Congress, as separate lodes, and very properly so regarded. When the common miner finds one of these veins, he locates the customary number of feet on its course and develops it, and claims his right to follow it on its dip, or descent into the earth. If another and similar lode is found in close proximity

as is to be expected, another miner is at liberty to locate on it and treat it in a similar manner.

The Richmond has a body of ore such as the common miner, as well as the scientist, would call a vein or lode. It fills all the requirements and in the nature of things seems practically, as well as scientifically, to be a lode. We find that the limestone has been first broken or fissured, and subsequently filled with the ore material. We find that the ore body is a unit. We find the outcropping of the Richmond and the lode dipping on mineral bodies connectedly down to the Potts Chamber, and below it. (See the maps annexed to the record.) It is one connected ore deposit, separate from the several claims of the Eureka, whether we consider them as lodes or other forms of deposit.

Not only do the works on science maintain us in these views, but the action and judgment of the miners in the Eureka District, after years of experience, are in strict accord. In 1864 the miners of the Eureka District, in which Ruby Hill is situated, met in Convention, and adopted rules and regulations to control the District. (Fol. 70.) They provided for the location of lodes. After five years of experience they again met in 1869, and amended their laws. (Fol. 72.) They did what Congress in 1870, provided for—and that is for locating other forms of deposit than veins or lodes.

The Court will remember that the basis of all miners' rights is the local rules and regulations, and the Acts of Congress treat them as of primary importance.

The maps show how completely these rules have been acted upon. To now hold that all this zone of limestone is one vast lode, is something entirely novel to and unthought of by the practical miners who settled, located, and developed the mines of the district, and inconsistent

with the manifest intention and theory of the Acts of Congress, as well as the actual meaning of the terms of the statute as defined in the literature of mining.

Mr. Sedgwick, in his work on the Construction of Statutory and Constitutional Law, says, (pp. 219–220) in relation to words: "The rule in regard to this is expressed in the maxim, *a verbis legis non est recedendum*, the meaning of which is that the statutes are to be read according to the natural and obvious import of their language. In early case, the judges said: 'they ought not to make any construction against the express letter of the statute, for nothing can so express the meaning of the makers of an act as their direct words; for *index animi sermo*.' The rule is well expressed by Parke, B., in the English Exchequer: 'The rule which the Courts have constantly acted on of late years, in construing Acts of Parliament, or other instruments, is to take the words in their ordinary grammatical sense, unless such a construction would be obviously repugnant to the intention of the framers of the instrument, or would lead to some other inconvenience or absurdity.' 'The current of authority at the present day,' says the Supreme court of New York, 'is in favor of reading statutes according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct what they deem either excesses or omissions in legislation, nor relieve against the occasional harsh operation of statutory provisions without the danger of doing vastly more mischief than good.'"

See Edrich's Case, 5 Co. p. 118.
*Jones* vs. *Harrison*, 6 Exch., 328, 333.
S. C. 2 Lownes, M. and P., 257.
*Mcdougall* vs. *Patterson*, 11 C. B., 755.
*Waller* vs. *Harris*, 20 Wend., 555, 556, 557.

## II.

The Acts of Congress use the words "vein" and "lode" according to the original and scientific meaning of the words.

The first Mining Act passed (July 25th, 1866, 14 U. S. Stat. at Large, 251) opens up the mineral lands of the public domain to exploration and occupation, subject to the local customs and rules of mining, thus confirming by express elgislation the previous usages and customs, and changing what the courts had called the implied license of the Government into an express permission.

But all mineral lands were not subject to entry or purpurchase. No person could purchase from the Government, or procure a patent for any mineral ground, except a vein or lode, "together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules." (Sections 2, 3, and 4.) The whole phraseology of the act makes this clear. The language is inapplicable to placers or segregated bodies of ore, not constituting lodes, or veins, called such by scientific men. Not only are the words "vein" and "lode" used, but "dips, spurs, angles, and variations" are mentioned, and these terms have no meaning when applied to placers or segregated ore-bodies. So the last clause of section 3 can only apply to actual veins, and lodes. Several lodes may, and frequently do, lie under one surface. They may be owned by different persons, each having his separate rights. The clause referred to says: "But said plat, survey, or description shall in no case cover more than one vein or lode; and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued." This can only apply to actual lodes or veins, and the surface, under the Act of 1866, was not granted, as we have seen, because it contained minerals, but only for the convenient working

with the manifest intention and theory of the Acts of Congress, as well as the actual meaning of the terms of the statute as defined in the literature of mining.

Mr. Sedgwick, in his work on the Construction of Statutory and Constitutional Law, says, (pp. 219–220) in relation to words: "The rule in regard to this is expressed in the maxim, *a verbis legis non est recedendum*, the meaning of which is that the statutes are to be read according to the natural and obvious import of their language. In early case, the judges said: 'they ought not to make any construction against the express letter of the statute, for nothing can so express the meaning of the makers of an act as their direct words; for *index animi sermo*.' The rule is well expressed by Parke, B., in the English Exchequer: 'The rule which the Courts have constantly acted on of late years, in construing Acts of Parliament, or other instruments, is to take the words in their ordinary grammatical sense, unless such a construction would be obviously repugnant to the intention of the framers of the instrument, or would lead to some other inconvenience or absurdity.' 'The current of authority at the present day,' says the Supreme court of New York, 'is in favor of reading statutes according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct what they deem either excesses or omissions in legislation, nor relieve against the occasional harsh operation of statutory provisions without the danger of doing vastly more mischief than good.'"

See Edrich's Case, 5 Co. p. 118.
*Jones* vs. *Harrison*, 6 Exch., 328, 333.
S. C. 2 Lownes, M. and P., 257.
*Mcdougall* vs. *Patterson*, 11 C. B., 755.
*Waller* vs. *Harris*, 20 Wend., 555, 556, 557.

## II.

The Acts of Congress use the words "vein" and "lode" according to the original and scientific meaning of the words.

The first Mining Act passed (July 25th, 1866, 14 U. S. Stat. at Large, 251) opens up the mineral lands of the public domain to exploration and occupation, subject to the local customs and rules of mining, thus confirming by express elgislation the previous usages and customs, and changing what the courts had called the implied license of the Government into an express permission.

But all mineral lands were not subject to entry or purpurchase. No person could purchase from the Government, or procure a patent for any mineral ground, except a vein or lode, "together with a reasonable quantity of surface for the convenient working of the same, as fixed by local rules." (Sections 2, 3, and 4.) The whole phraseology of the act makes this clear. The language is inapplicable to placers or segregated bodies of ore, not constituting lodes, or veins, called such by scientific men. Not only are the words "vein" and "lode" used, but "dips, spurs, angles, and variations" are mentioned, and these terms have no meaning when applied to placers or segregated ore-bodies. So the last clause of section 3 can only apply to actual veins, and lodes. Several lodes may, and frequently do, lie under one surface. They may be owned by different persons, each having his separate rights. The clause referred to says: "But said plat, survey, or description shall in no case cover more than one vein or lode; and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued." This can only apply to actual lodes or veins, and the surface, under the Act of 1866, was not granted, as we have seen, because it contained minerals, but only for the convenient working

of one single lode permitted to be entered by the claimant, and patented. So, too, by section 4, it is provided that the location is to be of "200 feet in length along the vein," and no person could make more than one location on the same lode, and no association more than 3,000 feet. All of this language is inappropriate to anything but an actual lode or vein.

The ores of quicksilver do occur in lodes and veins, sometimes as cinnabar and sometimes as native amalgam.

> Von Cotta's Treatise on Ore Deposits, pages 200, 201, 202, and pages 399, Sec. 226, and pages 400 and 401.

Gold, silver, copper and cinnabar all occur in veins or lodes.

It will thus be seen that the interpretation which we give to this act of Congress of 1866 (and in fact to that of 1872 also) embraces deposits of the several metals or ores mentioned and enumerated in the act. This we respectfully submit meets the view in that behalf presented by the court below on that subject.

And so the law stood, without any right to enter any mining claim for placer diggings, or segregated bodies of ore distinct from lodes or veins, until the passage of the Act of July 9th, 1870. (16 Stat. at Large, 217.) That act was amendatory of the original act, and provided for the very omission in the original act to which we have referred.

The language of sec. 12 of this amendatory act is very significant. It enacts: "That claims usually called '*placers*,' *including all forms of deposit, excepting veins of quartz, or other rock in place*, shall be subject to entry and patent under this act, under like circumstances and conditions and upon similar proceedings, as are provided for vein or lode claims." Here Congress itself classified the

mining claims. We have, 1st, the vein or lode claim; 2d, all forms of deposit not veins or lodes. The conditions and proceedings prescribed for vein or lode claims shall be applied to these other forms of deposit. Now it is manifest that these names and terms are applied, not to mineral land generally, but to the *forms* in which ores are deposited. The classification is based on the *forms* of the deposit. The first class is the form of a deposit in veins or lodes. Then "all forms of deposit excepting veins" are to be comprehended under the generic term "*placer*," and constitute the second class. Is it not manifest that Congress selected the standard of a lode or vein because those terms had a fixed and definite meaning? The necessity of a fixed standard is imperative, because claims for "placers," including all forms of deposit excepting veins of quartz," etc., make it essential first to ascertain what are veins and lodes before we can bring the other deposits within the provisions of the amendatory act of July 9th, 1870. These other deposits alone can be purchased, entered, and patented by the acre; whilst, as observed, the lodes or veins were granted and patented by linear feet on the course of the lode or vein.

Next came the Act of May 10th, 1872 (17 U. S. Stat., 91). By it sections 1, 2, 3, 4, and 6 of the Act of 1866 were formally repealed; but, in fact, new sections were substituted, yet the same distinction between lodes and placers was preserved. The amendatory Act of July 9th, 1870, was, by the express provision of section 7 of the Act of 1872, retained in full force. The placers, including all forms of deposit except veins or lodes, can still be entered by the acre, giving the patentee the right to everything in his claim to the center of the earth; whilst the claimant of the vein or lode takes his number of linear feet on the course of the vein, with the right to follow the dip, etc.;

but he cannot interfere with any other lode lying under his surface ground, if such other lode does not have its top or apex in his surface ground.

The Act of 1872 still more manifestly distinguishes, if possible, between the lode claim and the placer claim, than the Acts of 1866 and 1870. By sec. 11 it appears that the purchase price is differently regulated, and there may be a lode or vein inside a placer, and a patent may be issued for a placer claim, and it may also include the vein or lode claim inside the placer. But in such cases the vein or lode must be especially applied for as well as the placer. This section specifically provides, that "where a vein or lode, such as is described in the second section of this act, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be constructed as a conclusive declaration that the claimant of a placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or a lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof." We are at a loss to conceive how the meaning and intention of Congress in this classification could be made clearer. Yet, we respectfully submit that the decision and opinion of the Court below is directly repugnant to these statutes in ignoring the distinction between lodes or veins and other forms of deposit, and by allowing that kind of mining claim which would fall under the generic name "placer," as described in the statute, to be entered and patented as a vein or lode.

So, too, it was well-known to Congress that lodes approach a tabular form, and rarely exceed a few feet. As Prof. Whitney says in his "Metallic Wealth of the United States," already cited, though they are of indefinite length

and breadth, lodes are of "comparatively small thickness." Yet the zone in this case sought to be considered, a lode is found by the Court to be at its top or apex in the Richmond claim *eight hundred feet thick* (p. 28, Transcript).

By the Act of Congress of 1872 and the Revised Statutes, the surface location is limited to 300 feet on each side of the middle of the view at the surface, and may, by mining regulations, be reduced to twenty-five feet on each side of the vein. (17 U. S. Stat. at Large, p. 91, sec. 2). What then becomes of that part of the top or apex, outside of the surface ground?

We respectfully submit, therefore, that the views of the Court below will not harmonize with the Acts of Congress, and that the theory propounded by the court below should not be affirmed here.

We beg leave to call attention also to that part of the opinion of the Court below in which it adopts the view of opposing counsel—that the word lode includes "all deposits of mineral matter found throughout a mineralized zone or belt coming from the same source, impressed with the same forms, and appearing to have been created by the same processes." (p. 16.)

We submit that this embraces *placers*, not only in the comprehensive sense given to that term by the Act of Congress of 1870, but to "placers" proper as well as to gravel beds, such as are washed out by hydraulic power. They are found in zones or belts; they come from the same source; are impressed with the same forms, and appear to have been created by the same processes.

The same is true of absolutely isolated and segregated ore-bodies in a zone where there are hundreds of feet of barren matter to one of metal-bearing rock. This definition annihilates all distinctions and reduces all to lodes. Like death, it levels all distinctions.

## III.

We now call attention to the difference between the rights acquired by the locators under the different Acts of Congress.

Under the Act of Congress of July 26th, 1866, (14 U. S. Stats. 251); the miner located a vein or lode; the form of the surface was immaterial, and was controlled by the miners' customs and local laws, and was merely for the convenient working of the mine or lode. The patent issued for the mine—that is to say, for so many linear feet upon the vein or lode—"together with all its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition."

Secs. 2 and 4, Act of 1866.

The surface ground was merely for convenient working, and had no effects upon the rights of the miner to his mine, or the lode, or its dips, spurs, and angles.

It was well ruled by the Commissioner of the General Land Office, when the question was first presented to him under this law, that no matter what was the shape or form of the surface ground, or whether the party applied for any surface ground at all, the miners' rights upon the lode were exactly the same. He obtained as a distinct right, and as a distinct grant, his number of linear feet upon the lode, and he had the right to follow upon the dips, angles, and variations of his portion of the lode to any depth, without regard to the surface connected with his mine for convenience.

Copp's M. Dec., p. 28.

The Surveyor-General departed from the rectangular system to suit the customs of miners.

Sec. 4.

See also the rules and regulations of miners of Eureka, (folios 70 to 73.)

Under these rules and regulations and the Act of 1866, the lode or vein was located as a "*blind lode*," that is, *blindly*, as the course and dip were not yet ascertained from the developments. It was not necessary to place the notice *on the lode* or vein. It was sufficient if placed in reasonable proximity to the lode, so as to give notice of what was intended.

*Bullion M. Co.* vs. *Cræsus G. and S. M. Co.*, 2 Nev., 176;
Copp's M. Dec., 154, 201, p. 27;
*Philpots* vs. *Blaisdel*, 8 Nev. R., 75;
*Johnson* vs. *Parks*, 10 Cal. R., 448–9.

Whenever the "blind lode" was so far developed that its course and dip were ascertained, the locator became entitled to follow the lode as well on *its course* or strike, for the customary number of linear feet, as on its dips, angles and variation, independently of the form of the surface selected for the "convenient working" of the mine. The end-lines of his part of the lode were the termini of the linear feet, and were not to be confounded with the end-lines of the surface location for "convenient working" of the lode.

Cases *supra;* and
Copp's M. Dec., page 27–154, 201.

The Richmond claim was located under this Act of 1866, but none of the claims of the Eureka Company were, except the Champion.

The Act of May 10th, 1872, introduced a new system, making the location on the surface of primary importance. The rights of the parties were dependent upon the *form* of the surface location. The *location* could only be made

after the *discovery* of the lode or vein, and then presumably parties could tell its course and dip; the locations were then made at their peril. Section 2, fixes positively the number of linear feet on the conrse of the lode and the *width*, and prescribes that the *end-lines shall be parallel*—that is, the end-lines of the surface location.

Section 3 refers again to the *location* as of the first importance. In following the dips, and angles, and variations, the claimant was limited to the end-lines of his surface location.

Under the Act of 1866 the end-lines were drawn through the termini of the linear feet located on the lode, and between those lines the lode was followed on its dip. But under the Act of 1872, though the end-lines of the surface might not be at right angles with the course of the lode, as the dip always is, yet the locator is bound by his surface end-lines, and cannot go beyond them under the surface.

The Act of 1872 preserves all the rights of locators under the Act of 1866, and gives to them, in addition, all rights given the locator under the Act of 1872 in other respects.

See secs. 3, 5, 9, 12, 16.

The *inchoate and imperfect* rights, which Congress could divest, if it desired to, were those that were intended to be preserved, and not vested rights, beyond the power of Congress.

Smith's Con. Con. 759.

The parties had no vested rights before entry and purchase *as against the United States*, but had as against each other, and could "acquire a right to be preferred" by the Government.

*Shepley et al.* vs. *Cowan et al.* 91 U. S. R. pp. 337, *et seq*;

*Basey* vs. *Gallagher*, 20 Wall. 681;
*Atchison* vs. *Peterson*, Id. 512 513;
*Union M. & M. Co.* vs. *Ferris*, 2 Sawyer. 185 Copp's M. Dec. 201.

For rules of construction of statutes.
See *Heydenfeldt* vs. *Dancy etc.* Co. 92. U. *S.* R. 634 641.

Repealed acts are to be treated as still existing as to past rights.
*Creighton* vs. *Craig*, Cal. 119;
*McCauly* vs. *Brooks*, 16 Id. 12;
*Curran* vs. *Arkansas*, 15 How.309.

IV.

The words "vein," "lode," and "ledge," are used in the Acts of Congress as synonymous.

The word "ledge does not occur in the Act of 1866, but occurs first in the Act of 1872, and is brought in as a synonym.

It is impossible to treat the word "ledge," as used in the Act of 1872, otherwise than as a synonym of vein or lode. Not to do so produces very singular results. The word "ledge" does not appear in sections 1 and 2. Section 2 speaks of veins and lodes, and treats the two words as synonyms. It first speaks of "mining claims upon veins or lodes," and of their length, and then repeats the words "vein or lode" twice. In limiting the width of the surface location, it drops the word "lode," and uses "vein" alone, and uses it twice.

The word "ledge" first appears in sec. 3, in the phrase "on any mineral vein, lode, or ledge," and of rights acquired in them before the passage of the act. But when we come to the first *proviso*, the word "lode" is drop-

ped, leaving it " veins or ledges"; and when we reach the second *proviso*, the words "ledge" is dropped, and "vein or lode" used. In sec. 4 the word "ledge" is not used, but " vein or lode,' alone. In sec. 5 the word "vein" alone is used. In sections 8, 10, and 11 we do not find " ledge," but only " vein or lode claims." In sec. 14 we find "veins" alone. In sec. 15 we find only "vein or lode." In fact, the word "ledge" only appears in sec. 3, and nowhere else; and, as shown, is ignored in the second *proviso* of that section.

V.

The patents are to be read and construed in view of the plain meaning of the Acts of Congress above referred to.

We first call attention to the Richmond patent for the Richmond claim. The location was made on the 20th of September, 1869, (p. 62), and consequently under the Act of 1866. Though that act was repealed in the essential parts relating to vein or lode claims by the Act of May 10th, 1872, yet by sec. 9 of that act it was declared, " but such repeal shall not affect *existing rights*." So Sec. 3 applies as well to claims located before the 10th May, 1872, as to those to be subsequently located. Sec. 12 again declares, "nor shall this act effect any right acquired under said act" of 26th of July, 1866; and again and for the third time Sec. 16 provides "that nothing contained in this act shall be construed to impair, in any way, rights or interest in mining property acquired under existing laws." In several places it it also declared that all additional rights given to claimants under the Act of 1872, are conferred on the claimants under the Act of 1866, even where patents have already been granted. (See Sec. 9.) This gave to the claimants, under the Act of 1866, not only the specific lode already located, but all other lodes the top or apex of which lies inside the surface lines, etc.

We accordingly find that the Richmond patent (p. 64) grants the Richmond Company 501½ linear feet of the Richmond lode "throughout its entire depth, though it may enter the land adjoining; and also of all other veins, lodes, ledges, or deposits, throughout their entire depths, the tops or apexes of which lie inside the exterior boundary lines of said survey, at the surface extended downward vertically, though such veins, lodes, ledges, or deposits, in their downward course may so far depart from a perpendicular as to extend *outside* of the vertical side lines of said survey; *provided*, that the right to such *outside parts* of said veins, lodes, ledges, or deposits, shall be confined to such portions thereof as lie between vertical planes drawn downward through the end-lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits."

The main or particular lode is first given to the patentee precisely as if nothing else were granted, and as if the Act of 1872 were not passed. Then follows the grant of the "other lodes"; and the limit of end-lines in the patent applies only to the "other lodes," "the tops or apexes of which lie inside the surface lines," etc. The words "inside" and "outside" and "top or apex" refer only to the "other lodes," and not to the principal lode.

The Land Department decided that the locators, under the Act of 1866, were entitled to a patent to this effect, and the patents agree with the views of that Department.

Copp's M. Dec. 201–275, 154.

The Richmond patent, as we have seen, carries out fully these views and grants to the Richmond Company the right to follow the Richmond lode on its dip to any depth, though it may enter the land adjoining, being of course confined within the end-lines drawn at right angles to the course of

the lode, and that right given by the Act of 1866 was preserved and protected by the Act of 1872.

The Act of 1872, as we have shown, gives no prominence to one lode over another. Where the location was made after the passage of that act there is no principal lode. All veins under that act must, to be granted, have their tops or apexes inside the surface lines of location.

The grant in the patent should be of the surface, according to the location, and "of all veins, lodes," etc.

Sec. 2, Act 1872.

The patents of the Richmond Company therefore, cover the Pott's Chamber, as being on the dip of the principal lode, described in the Tip Top and Richmond, and those patents do not confine the defendants to the end-lines of the surfaces patented, but only to end-lines drawn at right angles to the ~~course~~ strike of the lode through the extreme points of the number of linear feet located lengthwise of the lode.

The court below finds that *the zone*, which is construed to be *the lode*, extends "in a northwesterly and southeasterly direction." There is no other description of the course or strike of the lode (p. 28.), and no other qualifying or controlling languge. These terms mean due northwest and southeast.

*Brandt ex. dem. Walton* vs. *Ogden*, 1 Johns., R. 156.
*Jackson ex. dem. Clark* vs. *Reeses*, 3 Cai., R. 293.
*Bosworth* vs. *Danzier*, 25 Cal., R. 296.
Worcester's Dictionary.

Take this line through the Richmond claim, northwesterly and southeasterly, and draw from the termini of the 501½ feet described in the Richmond patent, planes at right angles to the ~~course~~ strike of the lode, and they will embrace the mining ground in controversy.

The dip is just the same, whether from the apex it goes down vertically or at the present angle.

Copp's M. Dec. p. 29.

We understand the rulings of the court below (pp. 81–82) to be in conflict with these views, and the right of the Richmond Company under the Act of 1866, to follow the dip of its lode, within the end-lines of its 501½ linear feet, drawn at right angles to the course of the lode, is denied, and that company held limited to the end-lines of the surface location of the ground selected, for the convenient working of the lode. Whilst this was so and while it was admitted, that under the Act of 1872, the parallel end-lines of the surface location bind the locator, yet we interpret the rulings of the court below, as holding in effect, that if the Act of 1872 is violated, and the end-lines of the surface location are not made parallel, the locator, under the Act of 1872 has the very right we claim under the Act of 1866, and which the court below denied to the Richmond Company. If this be so, then the miner who violates the Act of 1872, has greater rights than he who observes it.

Besides this, the defendant's locations of the Utah and Arctic hold the ground, if its patents do not.

See, also, *English* vs. *Johnson*. 17 Cal. 107.
*Hess* vs. *Winder*, 30 id. 355.

## VI.

The only patents of the Eureka Company referred to in the findings as embracing, on the dip of the lode, the land in controversy, or as having an effect on the "Potts Chamber," are those for the following claims (see p. 30—17th finding).

1st. The Lupita, dated March, 1877.
2nd. At Last, dated December 12th, 1876.
3rd. Champion, dated July 16th, 1872.

The location of none of these is in evidence, except the Champion. There is no date to which either of the first three can relate earlier than the 10th of May, 1872, the date of the last Act of Congress. They must be assumed to have been located under that Act. These patents, issued under the Act of 1872, are null and void, as having been issued not only without authority of law, but in violation of law, as the end-lines of the locations are not parallel as per sec. 2 of that Act.

They are void upon their face, and the objection may be taken at any time, and in ejectment.

*Patterson* vs. *Winn*, 11 Wheat, 388.
*Polks*, Lessee, vs. *Wendell*, 9 Cra., 99.
*Stoddard* vs. *Chambers*, 2 How., 318.
*Easton* vs. *Salisbury*, 21 How., 431.
*United States* vs. *Stone*, 2 Wall, 535.
*Laviga* vs. *Roland*, 2 How., 588.
*Reinhart* vs. *Phelps*, 6 Wall, 160.
*Parker* vs. *Duff*, 47 Cal. R., 554.
*McGarrahan* vs. *New Idria M. Co.*, 49 Cal., 334.

If, to avoid the conclusion of nullity, it is to be presumed that the locations were under the Act of 1866, and that the surface and end-lines are not, therefore, important, this presumption does not establish the location at any particular date. It cannot be presumed to be of older date than the Richmond's location. The *onus* of showing a better title is on the plaintiff, and the Richmond's possession—itself presumptive evidence of title—will control. But, clearly, the relation can only go back to the time of the entry, (as the locations do not appear) and therefore these patents are presumably on locations under the Act of 1872, and so void, as being in violation of the law.

By the failure of the Eureka Company to put in evidence the locations of these several claims, the presump-

tion arises that such evidence, if produced, would be adverse to that company.

1 Greenl. Ev., sec. 82, pp. 97–98.

Code Civ. Proc. Cal., 1963, in affirmance of common law.

*Locations* under the Act of 1872 cannot be reformed when patents are applied for. The *original location* controls, and it it does not conform to law, a *new location* must be made.

Copp's M. Dec., pp. 319–320.

As to the *Lupita patent*, we call attention to the fact that it was not issued until the 30th of March, 1877, p. 54 *et seq*) long after this suit was brought, (see pp. 5–11–12 and no other right or claim to the ground is found except the patent. So far, too, as the Lupita claim is concerned the Court finds that it has only been withheld wrongfully since the date of that patent, (p. 31) which, as observed, was since suit brought; whilst the Richmond patent was issued 30th April, 1874, on a location of 20th September, 1869 (pp. 54–62–63.)

The At Last patent is also dated later than the Richmond—that is to say, on 12th December, 1876—and no date of location is given (p. 38.)

The Champion patent, the only remaining one, (p. 35) dates 16th July, 1872. The location, however, was made on the 23rd May, 1870, and consequently under the Act of 1866 (p. 58.)

That location only took up 400 feet on the one lode. If the limestone zone be but one mammoth lode running north-westerly and south-easterly, there could be no conflict between the Richmond and Champion, because where the Richmond terminates running south-easterly, the Champion commences and runs on upon the course of the vein

south-easterly. Each would be confined to its linear feet on the course of the vein running north-westerly and south-easterly, and each would be entitled to follow the dip within planes drawn downward through the respective termini of their linear feet on the lode. The south-easterly line of the Richmond and the north-westerly line of the Champion would coincide, and they would extend in parallel strips on the dip without conflict. The only conflict that arises is the attempt of the Eureka to follow the dip within the parallel end lines of the surface location. Now this right, as before shown, only arises under the Act of 1872, and is confined, so far as locations under the Act of 1866 are concerned, to "other lodes" having their tops or apexes in the surface, and not to the single lode to which a locator was limited under the Act of 1866. No right was given by the Act of 1872 to the locator under the Act of 1866 to follow his originally located lode on the dip between the end-lines of the surface location. If that were true, the Champion would embrace all between its surface end-lines, under the Act of 1872, and also all on the dip between its end-lines drawn at right angles to the ~~course~~ strike of the lode, under the Act of 1866, and thus extend to the north-easterly, with two diverging lines embracing more and more the farther it extended.

The Richmond and Tip Top were located 20th September, 1869, and the Champion not until 23rd May, 1870.

The patents relate back to the time of location, and the patentee having the oldest location cuts out all intervening rights.

*Heydenfelt* vs. *Daney G. & S. M. Co.*, 93 N. S. R. 637–641;
S. C. 10 Nev 308;
*S. P. Shepley* vs. *Cowan*, 91 N. S. R., 339;
*Stark* vs. *Starrs*, 6 Wall, 418;
Other cases *supra*.

As between two patentees, the Court inquires as to the elder right.

*Henshaw* vs. *Bissell*, 18 Wall, 255.

The Champion patent, on its face, expressly reserves the rights of all adverse claimants. If it did not it would be implied by law.

*White* vs. *Cannon*, 6 Wall. 448.

The Champion location, put in evidence, dates May 23rd, 1870. No attempt was made on the trial to show any other location. But, independently of that location, it cannot relate back earlier than 1st April, 1871, the date of entry recited on its *face*.

It was in the power of the Eureka Company, if it had made any other location, to show the time of its location. The *onus* was on it. Not producing its locations when challenged to do so upon trial, creates the presumption that such evidence, if produced, would be adverse to plaintiffs.

1 Greenl. Ev. Sec. 82, pp. 97, 98;

Code Civ. Proc. Cal., Sec. 1963, in affirmance of common law.

The Richmond Company must therefore be held to have the elder and superior right by its patents.

## VII.

The Richmond Company lost nothing by failure to file an adverse claim in the local land office against the application of the Eureka Company for its Lupita, At Last, and Champion claims.

So far as the Lupita is concerned, there was already a patent issued to the Richmond when the Lupita location was entered. (pp. 54–63.) The title of the United States had already passed to the Richmond Company. No pat-

entee of the United States is compelled to attend the land offices and file adverse claims to preserve what he already has a patent for. The contest only arises between claimants of the possessory title, and the successful litigant becomes entitled to the government title, and takes the patent. But none of this can effect a person already having a title by patent.

So far as the *At Last* is concerned, the rule laid down by the Court below is favorable to the Richmond Company. The Richmond was located 20th September, 1869, and it does not appear when the At Last was located. But the patent for the Richmond was issued 30th April, 1873, and the patent for the At Last not until December 12th, 1876; so that by the rule invoked, the locators of the At Last lost, and the subsequent patent for the At Last could not divest the previously vested title of the Richmond Company.

As to the Champion claim, we have already shown that it and the Richmond were located in a line without conflict, each under the Act of 1866, the Champion commencing where the Richmond left off. As to the lines of each on the lode, and as to the surface ground, there was no conflict. The only conflict that could arise would be an "underground conflict," and as to this, it could not be settled by any litigation, nor could the Land Office be controlled by any decision on that subject.

This question arose in 1870, under the Act of 1866, and was presented to the Commissioner of the General Land Office, Hon. Jos. S. Wilson, and his ruling and decision we submit are conclusive. (Copp's U. S. Mining Dec. p. 27 *et seq.*)

Referring to such an underground conflict, Commissioner Wilson says: "Evidently such a conflict cannot be adjudicated in Court under the sixth section of the Mining Act,

for the controversy there contemplated is one in which the judicial decision would control the General Land Office in its subsequent action on the application for patent, and would lead to a modification of the grant one way or the other, so as to conform it to the decision of the court. But no such result could follow from the action of the Court upon the question raised by Williams & Co.; because whatever might be determined there, the patent issued from this office would still grant '*the right to follow the vein or lode with its dips, angles and variations to any depth, although it may enter the land adjoining ;*' the Mining Act authorizing the grant to be made in this form, and no decision of a legal tribunal can nullify this statutory requirement. Most assuredly a decision producing no change in the description of the premises, or the parties, can in no way control the grant contained in a patent, for all its other formal parts are statutory and beyond the power of the Courts."

VIII.

The agreements and deeds of compromise (Exhibits X, p. 70; Y, p. 74; Z, p. 77) do not relate in any manner to the property in dispute here, and cannot affect the rights of the parties, except so far as the defendant obtained new rights by conveyance of the Look Out ground and patent. With that exception, the parties stand upon their original rights. The parties were only bound by the line "*beginning*" at point X on the diagram, and ending at point R. "*Beginning*" at one point, and "ending" at another, excludes the idea or possibility of any other "beginning" or "ending" of a line. That line had three courses, widely variant, which excludes the idea of any implied indefinite extension beyond the points expressly designated as the beginning and end.

## IX.

The description of the land in controversy is not in accordance with the statutes of Nevada. The 1221 and 1273 sections of the compiled laws of Nevada, Vol. 1, are as follows:

"1221, Sec. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds or with other equal certainty."

1273, Sec. 212, requires that the executions, "if it be for the delivery of the possession of real or personal property," "shall require the sheriff to deliver the possession of the same, particularly describing it to the party entitled thereto."

The complaint was not in conformity to this (see p. 3 Record) and no execution could issue conformably to Sec. 1273 of the statute of Nevada. This would seem to have necessitated the judgment for all of the land described in the complaint (p. 79) instead of the part from which plaintiff below was ousted (p. 3), which was clearly erroneous.

We beg leave to refer upon the oral argument herein, to the assignments of error so fully presented above, and that they may be taken and considered as points presented here, without repetition. We also beg leave to refer to the briefs filed in the case in equity between the same parties, and involving the same questions—the two cases being practically one.

We respectfully submit that the judgment of the Circuit Court should be reversed.

S. M. WILSON,
THOMAS WREN,
*Counsel for Plaintiffs in Error.*

March, 1881.

OFFICE SUPREME COURT U. S.
FILED
MAR 24 1911
JAMES H. McKENNEY, Clerk.

# In Supreme Court of the United States.

| | |
|---|---|
| The Richmond Mining Company of Nevada, *Plaintiff in Error*, *vs.* The Eureka Consolidated Mining Company, *Defendant in Error.* | Writ of Error. |

Additional assignment of error, to be added to assignment on file at page 12, of brief of counsel for plaintiff in error.

The special findings are not sufficient to support the judgment for the following reasons, in addition to those already assigned.

*Nineteenth.* The facts contained in the findings are inconsistent and irreconcilable—that is to say, in the fourth finding, it is found that the zone of limestone therein described extends in a northwesterly and southeasterly direction, and is a lode or ledge of metal-bearing rock, within the meaning of those terms as in said findings described; yet, in the seventeenth finding it is found, that the mining ground in dispute is situated within such lode or ledge, and within planes drawn vertically down through the extreme points of the patented locations of the At Last and the Lupita or Margaret claims, at right angles to the course or strike of the said lode or ledge, which the maps marked U and V show to be an impossibility.

OFFICE SUPREME COURT U.S.
FILED
MAR 24 1891
JAMES H. McKENNEY, Clerk.

# In Supreme Court of the United States.

| | |
|---|---|
| The Richmond Mining Company of Nevada, *Plaintiff in Error*, *vs.* The Eureka Consolidated Mining Company, *Defendant in Error.* | Writ of Error. |

Additional assignment of error, to be added to assignment on file at page 12, of brief of counsel for plaintiff in error.

The special findings are not sufficient to support the judgment for the following reasons, in addition to those already assigned.

*Nineteenth.* The facts contained in the findings are inconsistent and irreconcilable—that is to say, in the fourth finding, it is found that the zone of limestone therein described extends in a northwesterly and southeasterly direction, and is a lode or ledge of metal-bearing rock, within the meaning of those terms as in said findings described; yet, in the seventeenth finding it is found, that the mining ground in dispute is situated within such lode or ledge, and within planes drawn vertically down through the extreme points of the patented locations of the At Last and the Lupita or Margaret claims, at right angles to the course or strike of the said lode or ledge, which the maps marked U and V show to be an impossibility.

*Twentieth.* The seventeenth finding is in itself inconsistent and irreconcilable, inasmuch as it finds that the mining ground in dispute is within planes drawn vertically down through the end-lines of the plaintiff's patented location of the Champion claim, and at the same time within planes drawn vertically down through the extreme points of the patented locations of the At Last and the Lupita or Margaret claims, at right angles to the course or strike of said lode or ledge, and produced so as to follow the dip of the lode.

*Twenty-first.* It is not found in said seventeenth finding, or elsewhere in said findings, that the mining ground in dispute is situated upon any lode, the top or apex of which is within the surface lines of either said Champion claim or said At Last or Lupita claims; but said seventeenth finding merely finds that the top or apex of said lode is within the surface lines of said patents to the said Eureka Company, including all of said claims as a whole.

## Additional Points.

X.

Inconsistent findings will not support a judgment; but the inconsistency is ground of reversal.

See,

Inconsistent findings will not support the judment.

*Reese* v. *Corcoran*, 52 Cal. R., 495.

The Court must find the fact in relation to every material matter in issue.

*Gillman* vs. *Metcalf*, 7 Cal. R., 137;
*Watson* vs. *Cornell*, 52 Cal. R., 91;
*Glasscock* vs. *Ashman*, Id., 420;
*Thompson* vs. *Corpstein*, Id., 653;
*Leclert* vs. *Oullahan*, Id., 252;
*Breeze* vs. *Doyle*, 19 Id., 102.

Findings of probative facts not necessarily conclusive if the issues will not support the judgment.

*Coreny* vs. *Hale*, 49 Cal., 552;
*O'Connor* vs. *Frasher*, 53 Id., 435;
*Gillan* vs. *Metcalf*, 7 Id., 137.

Equivocal findings will not support the judgment.

*Woodson* vs. *McCune*, 17 Cal., 299;
*Breeze* vs. *Doyle*, 19 Id., 102.

## XI.

The only finding that refers to the top or apex of the lode upon which the mining-ground in dispute is situated, is the *seventeenth*. (P. 30.) That finding does not find that the top or apex of the lode upon which the mining-ground in dispute is situated lies in either the Champion, or At Last, or Lupita (or Margaret) claim.

It simply finds that "the top or apex of said lode is within the surface lines of said patents to the plaintiffs," meaning the patents for the Lupita or Margaret, the At Last *and* the Champion. These three claims lie contiguous, and form one large area. It may be true that within this large area of surface the lode has its top or apex, and yet that top or apex may be alone in the Lupita, or Margaret claim. The top or apex may not be in the Champion or At Last surface claims. If the top or apex were in the Lupita, or Margaret, alone, the judgment should be reversed, as elsewhere we show that the patent for the Lupita was not issued till after suit brought, and no claim to the Lupita ground was shown except the patent, and no prior right or possession in the Eureka Company was found. It is not found that the top or apex was in either the Champion, or in the At Last.

This is a vital point, for not only was it necessary for the Eureka Company to show a patent, but also that the top or apex of the vein or lode is within the surface lines of its patented location.

*Stevens* vs. *Williams* (U. S. C. C. Dist. Nevada), 19 Am. Law Reg. N. S., 298, 302.

Each and all of the assignments of error are relied upon, and it is respectfully submitted that the judgment should be reversed.

S. M. WILSON,
THOS. WREN,
*Of Counsel for Plaintiff in Error*

# T. W. & H. K. Porter

## Shawl & Blanket Strap.

No. 85,129. Patented Dec. 22. 1868.

Fig. 1

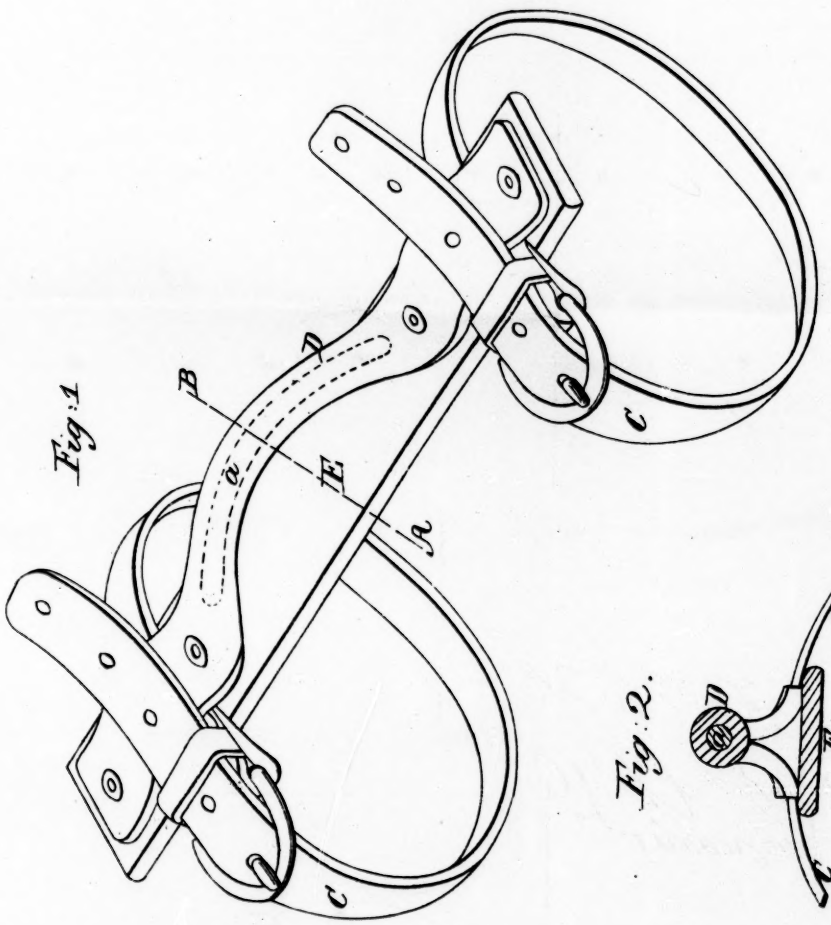



Fig. 2.

Witnesses;

Henry Hyde Smith.

Hobart F. Whitman

Inventors;

T. W. Porter

H. K. Porter

# T. Goodrum.
## Book Support.

No. 58,940. Patented Oct. 16, 1866.

FIG. 1. Top View.

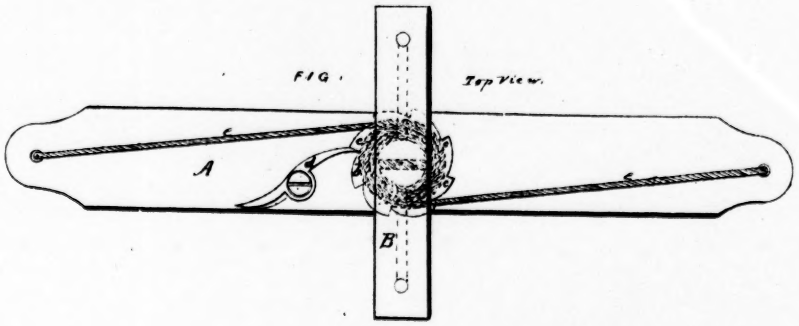
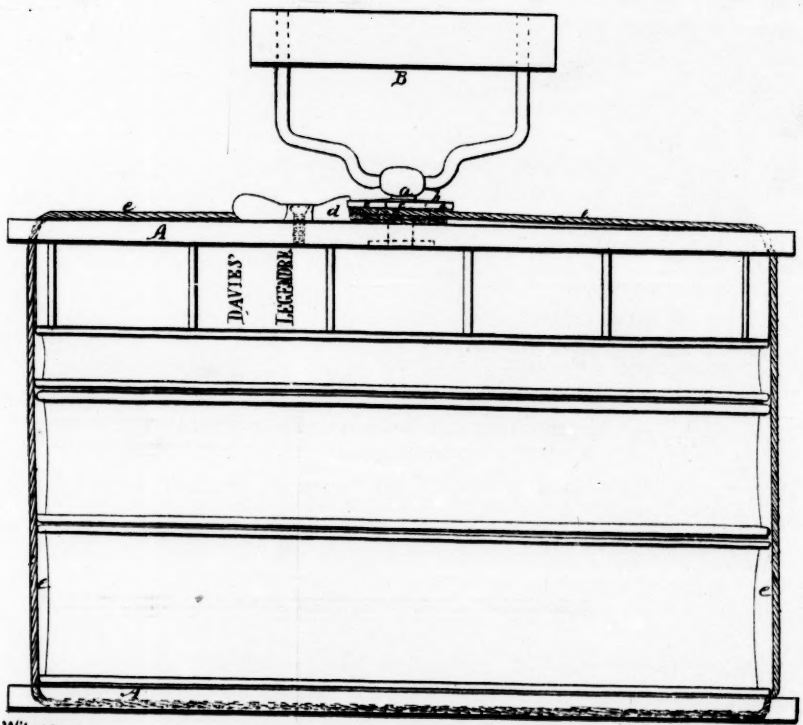



FIG. 2. Elevation.



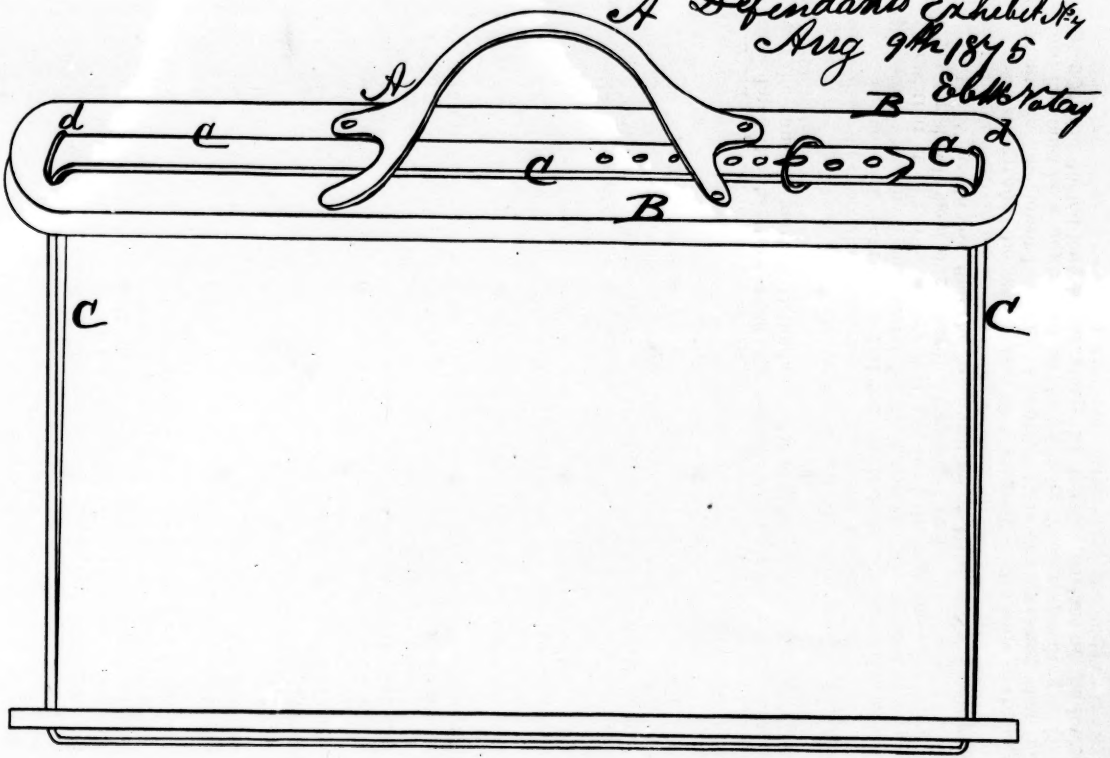

Witnesses

Benj. F. Thurston
John D. Thurston

Inventor

Thomas Goodrum

Schedule Webb
Defendants Exhibit No 4
Aug 9th 1875
Ebbitt Notary



Schedule Webb
Defendants Exhibit No 4
Aug 9th 1875
Ebbs Rotary

# W. C. Watson.

## Book Support.

No. 69,285. Patented Sept. 24, 1867.

Fig. 1.

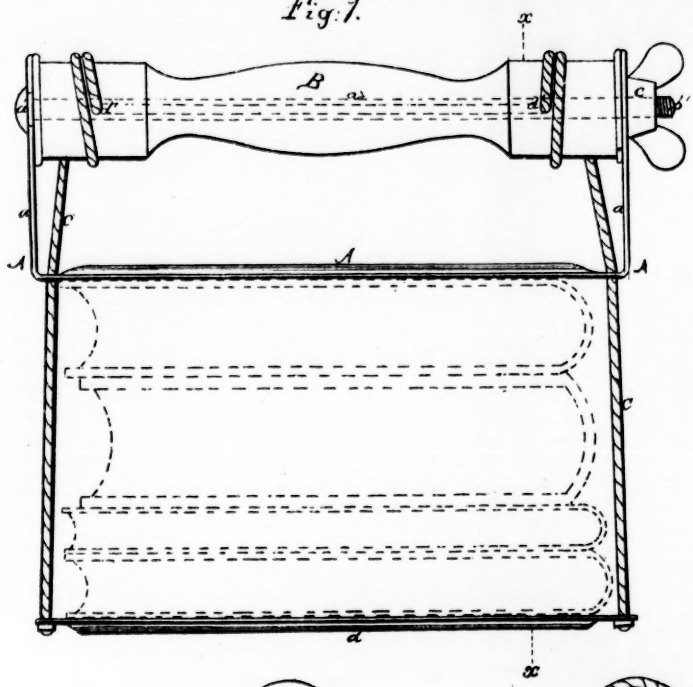



Fig. 2.

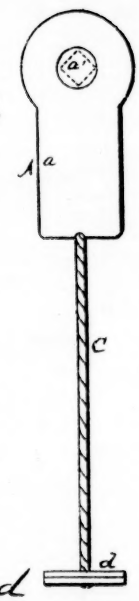



Fig. 3

Witnesses.

Geo. W. Reed

J. A. Whitney

Inventor.

W. C. Watson.

# W. C. Watson.

## Portable Book Clamp

No 75660 **Patented Mar. 17, 1868.**

Fig 1

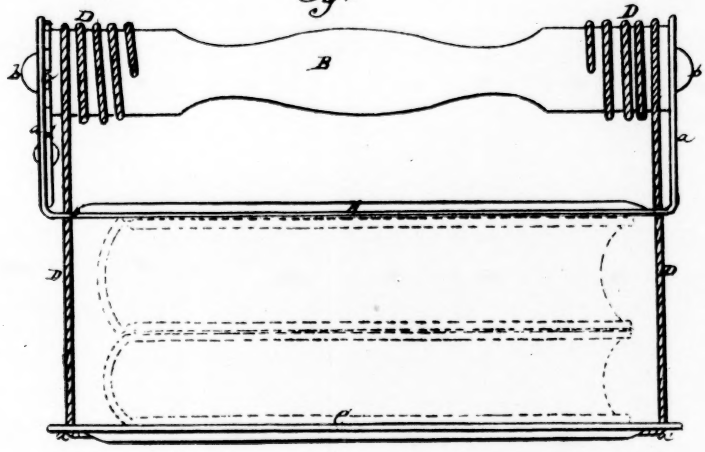



Fig. 2.

Witnesses
W. Morris Smith
Sydney E. Smith

Inventor
W. C. Watson

# T. Goodrum.
## Book Support.

No. 58,940. Patented Oct. 16, 1866.

FIG 1. Top View.

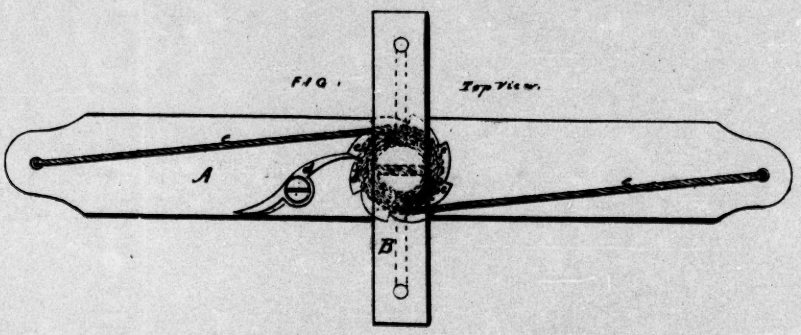
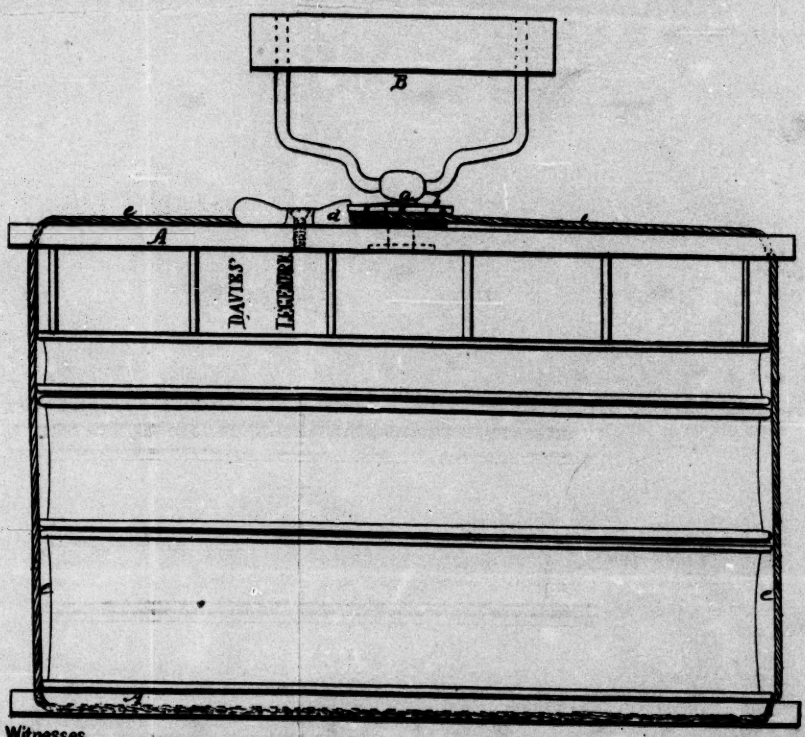



FIG 2 Elevation.




Witnesses

Benj. F. Thurston

John D. Thurston

Inventor

Thomas Goodrum

No 636.

The Richmond Mining Co of Nevada

vs. page 178

The Eureka Con Sol. Mining Co